COMMITTEE ON ADMINISTRATIVE TRIBUNALS AND ENQUIRIES

APPENDIX I

TO THE MINUTES OF EVIDENCE

Memoranda submitted by persons and organisations who did not give oral evidence

LONDON
HER MAJESTY'S STATIONERY OFFICE
1957

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Sir Carleton Allen, Q.C,

Note: Sir Carleton Allen's evidence consisted of "Administrative Jurisdiction", an article printed in "Public Law" (1956) pages 13-109, and a supplementary memorandum on an administrative court of appeal.

SUPPLEMENTARY MEMORANDUM

In my cursory "General Observations" on tribunals which I had attempted to describe in outline I had no space to deal with the question of an Administrative Court of Appeal, and in any case I had referred to this subject in a new edition of my book, *Law and Orders*, which is now in the press. Perhaps I may be allowed to add a few brief remarks on this topic.

2. I have had the advantage of reading privately Professor W. A. Robson's memorandum to the Committee, and this is one of the subjects which he discusses with his usual vigour and clarity. Professor Robson's proposals are now more clearly defined than the somewhat tentative suggestions which he made to the Committee on Ministers' Powers in 1930. Believing as he does (and, if I may say so, as I do) that an appellate court is now an urgent necessity, he cannot be criticised in logic or in conviction for having set a very ambitious goal before him. On the other hand, one has to remember that reform, like politics, is, especially in our society, "the art of the possible" and I cannot think that a project so sweeping as Professor Robson's is likely to command immediate support, though he may ultimately have the satisfaction of being regarded as a prophet. For this reason, even though it may seem rather pusillanimous, I should prefer to go gradually, and as a first step I should favour the proposals embodied in Mr. Anthony Marlowe's Liberties of the Subject Bill of 1954. This, as the Committee knows, marched in step with the pamphlet, "Rule of Law", issued by the Inns of Court Conservative Association, but unfortunately it was still-born owing to Parliamentary exigencies. I do not attempt here to discuss the details of the Bill, because it will doubtless engage the attention of the Committee. It is not perfect, and if it had reached the legislative stage it would probably have been amended and improved in debate, but its great merit seems to me to be that in many instances it would have substituted a limited and controlled discretion for what is now an unlimited executive discretion, while at the same time not attempting to interfere with legitimate Ministeral policy. That, in my view, is the first necessity in the present situation.

3. While, as I have said, agreeing in the main with Professor Robson's aspirations, I have the misfortune to differ from him on several points of substance.

4. I cannot share Professor Robson's anxiety to detach an Administrative Court of Appeal from the Supreme Court. I feel, with respect, that Professor Robson is unduly apprehensive of the "legalism" of the judicial mind and of its supposed instinctive hostility to "bureaucracy". Though this charge, from a certain political point of view, may have been justified in the past, I can see no evidence to support it in the recent, and especially the post-war, tendency of judicial decisions. On the contrary, I would suggest, if I may dare so far without disrespect, that the courts have tended to lean too much in the opposite direction and have sometimes shown themselves (to borrow a provocative phrase from Lord Atkin) "more executive-minded than the executive". Professor Robson seems chiefly to fear that the appellate court would be bound hand and foot by the extremely technical code of the Rules of the Supreme Court. I should equally deprecate this in a court of the kind contemplated—for example, I think it would be unfortunate if our complex rules of evidence were applied in all their stringency—but I do not see why this should follow. It would surely depend on the statutory constitution of the court, and I cannot suppose that anybody would wish to constitute it on exactly the same line as an ordinary court of law. Already there are many tribunals which are established by statute and governed

in procedure by Statutory Instruments, but most of them have much more freedom in procedure than civil and criminal courts. As against the possible disadvantage—remote, as I believe—of excessive "legalism", I think that there would be great advantage both in prestige and in convenience in including this appellate tribunal within the framework of the High Court, though its jurisdiction and procedure could without difficulty be as different from other Divisions as those of the Queen's Bench are from the Chancery or the Probate, Divorce and Admiralty Division.

5. I also take leave to differ from Professor Robson with regard to the personnel of the appellate court. I do not in the least deprecate the introduction of well-qualified laymen, because I believe that such persons, under proper guidance, are as well able to approach an issue in a judicial spirit as lawyers. Some fifteen years of experience as a magistrate has impressed this fact on my mind, and I have a great respect for the capacity of the average, sensible, British layman (and laywoman no less) to acquire the impartial, judicial point of view. But I think that all experience shows that the influence of a legally trained mind, especially in the chair, is most valuable. It is doubtless true that a wise layman in the chair is better than an unwise lawyer, but training, and the instinct which it fosters, in the average case count for a great deal. Serving for some nine years on an Appellate Tribunal for Conscientious Objectors, I was greatly struck by the advantage which, in a difficult and controversial jurisdiction, the tribunal gained in procedure and in atmosphere by having as its Chairman a former Chief Justice of Palestine. In appeals which could easily become heated, argumentative or impatient, his example to lay members was invaluable, and I do not think it was uncharacteristic of most legal chairmanship.

6. In a more general sense, I suggest that at present the whole of our administrative law is confused by fine, and not always consistent, distinctions between the judicial, the quasi-judicial and the administrative. Many attempts have been made to draw boundary-lines between them, and it is easy for any critic to show how inadequate and inconsistent they are. To take one example from many, I think (I hope without disrespect) that anybody, layman or lawyer, reading the judgment of Lord Greene, M.R., in *Johnson & Co.* v. *Minister of Health*, (1947) 2 All E.R. 396, will leave it in a state of utter confusion about the Protean character of Ministers and their functions. These jurisprudential distinctions are attempts at interpretations on common law principles which are inappropriate to a new situation, and in my opinion they will never succeed in establishing a firm basis. What is needed is legislative provision which will cut through these juristic refinements and provide recourse on the general principle that whenever, at any stage of an executive process, an administrative authority is called upon to determine conflicting claims which affect liberty or property, there should be appeal to an independent tribunal, certainly on any point of law or jurisdiction, and also on facts to the extent of reviewing their accuracy, relevance and reasonableness. I am well aware that that is a very wide generalisation which might need to be modified in some circumstances; I am also conscious that it may never be possible to separate precisely and invariably the administrative and the judicial spheres, for the manifest reason that in the nature of things they frequently merge into each other; but I believe that the principle which I have endeavoured to state, however imperfectly, should be the chief guide, and it is my conviction that in the present state of the law it can be established only by the creation of an independent tribunal with a jurisdiction appropriate to a new order of law and society which has outgrown the technique of ancient common law doctrines. This is particularly noticeable, in my submission, in the present inadequacy of the supervisory jurisdiction of the High Court, by the prerogative orders, injunction and even declaratory judgments, to deal with the substance of administrative issues.

Rt. Hon. Sir Edward Bridges, G.C.B., G.C.V.O., M.C.[1]

1. This memorandum is the response to a suggestion that I should submit a personal and general memorandum of evidence. It does not deal with the special departmental interests of the Treasury or of any other department. Nor is it written from the point of view of someone (such as the Treasury Solicitor) who has knowledge and experience of many administrative tribunals and administrative procedures of the kind falling within the Committee's terms of reference.

2. Lacking such experience, all I can do is to put forward a few very simple observations, written from the point of view of someone who has a great interest in, and a certain measure of responsibility for, the working of the machinery of government.

3. While my remarks will be very general, it is I believe necessary to make a distinction at the outset between the problems presented by administrative tribunals, which give their decisions independently of any government department, and by administrative procedures, the nature of which is to leave ultimate responsibility for the decision to a Minister and his official advisers. In the former case the procedure and composition of the tribunal are sometimes criticised, especially by lawyers conversant with the methods of courts of law. But so far as I am aware, the only ground on which suspicion is directed at the civil service is that a tribunal concerned with questions arising under an Act administered by a government department may be influenced in favour of the department. I do not myself believe that there is any substance in this. My own knowledge of how civil servants think about these things leads me to believe that, once a tribunal is set up, its independence is scrupulously respected in every way. In the case of administrative procedures, however, the Minister's official advisers take a large share of responsibility for decisions which sometimes affect rights of property and the means of livelihood and amenities of private citizens, and there I recognise that there is a considerable feeling, not limited to the legal profession, that decisions may sometimes be taken with inadequate knowledge and regard to local circumstances.

4. There is no doubt that the number of administrative tribunals has greatly increased since their procedure was examined by the Donoughmore Committee. The main reason for this lies in the increased impact of State legislative schemes on the lives of the general body of citizens. For example the administration of National Assistance and the National Insurance scheme gives rise to numerous claims and disputes. And in many fields the demand for higher standards of welfare and safety for the public have necessitated more regulation and supervision of industrial and other activities; and this too has created a need for methods of deciding disputes, often of a technical nature, expeditiously and cheaply. Another reason for the increase may be found in the fact that public and Parliamentary opinion has tended to demand that, wherever possible, decisions which may prejudice private citizens should be assigned to independent tribunals rather than left to Ministers and their advisers. The agricultural land tribunals, which have the final decision on whether the public interest requires the dispossession of an inefficient farmer, are a good example of this tendency. I have added as an appendix to this note some particulars supplied by the main departments which show how far new tribunals have been set up under statute since the Donoughmore enquiry.

5. It is also true that administrative procedures, of the kind which involve a public enquiry or hearing, have extended into new fields. Probably the most important, since it affects the rights and amenities of so many people, is the control of the use of land under the Town and Country Planning Acts. Compulsory purchase has also grown considerably, and here an important new development has occurred since the Donoughmore report. In 1936 a Minister was given for the first time power to acquire land compulsorily by means of an order made by himself, and this has lead to criticism of the procedure under which

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(1) During the course of the enquiry Sir Edward Bridges, Permanent Secretary to the Treasury, retired from the public service. His successor, Sir Norman Brook, gave oral evidence on 3rd December, 1956, Day 24.

the Minister is said to be the judge in his own cause. I am sure that the Committee will feel that this problem merits special examination. It is very desirable that persons whose rights are affected should feel that the procedure offers them a fair opportunity of stating their case in such a way as to bring it bome to the Minister and those who advise him on the final decision. The question is a very difficult one, because it does not seem possible that in fields where policy considerations are decisive, the Minister should assign responsibility to an independent trihunal. The Donoughmore Committee, when deciding against the establishment of a system of administrative law, empbasized tbe importance of Parliamentary control and tbe preservation of the influence on the Minister of public opinion "with which he is in daily contact and to which he is highly sensitive" (paragraph 19 on page 110). It is often said nowadays that Parliamentary control has become less effective because of the multiplicity of Parliamentary business and the pressure on Parliamentary time. There may be sometbing in this, but in my opinion tbe fact that any matter of serious complaint can be raised by a Parliamentary question and, if supported hy public opinion, pressed to a debate, is still a very powerful influence, and, I am sure, a salutary influence on administrative processes.

6. From every point of view it is clearly most desirable that both administrative tribunals and administrative procedure should have the general confidence of Parliament and the puhlic. I have no doubt that the Committee will be considering wbat recommendations they can make, not merely to ensure tbat trihunals work fairly but also to ensure that tbey are seen to work fairly. This very obvious remark is made to lead up to the following suggestion: namely to ask whether confidence does not also depend on whetber there is a general understanding of the purposes and the parts which tribunals play in tbe totality of the machinery necessary to meet the broad objectives of statute law. The Donoughmore Committee adopted a somewhat analytical and legal approach, and grouped the tribunals and procedures by reference to tbeir "judicial", "quasi-judicial" or "administrative" nature. I see how essential this line of approach is. But I would hope that the Committee may also find it possihle in their Report to present a broad picture of their purposes and the place which they occupy in tbe scbeme of things. Thus:—

(*a*) There is a very large group of tribunals which deals witb the claims of individual citizens under, for example, tbe National Insurance Acts. The object of these trihunals is to provide what the Donoughmore Committee called something "more readily accessible and freer from tecbnicality . . . more expeditious" than the ordinary Courts.

(*b*) There are certain types of subject whicb cannot be settled without the help of specialised or professional experience; and there are tribunals wbich have been devised to bring this experience to bear in a simple and expeditious way.

(*c*) There are also the procedures to which I have referred, concerned with matters of policy which cannot be assigned to independent tribunals, and there the prohlem is to reserve responsibility to an executive Minister and at the same time to give a fair and effective opportunity to persons objecting to the proposal to state their case and secure its consideration by the Minister and his advisers.

7. These examples are only illustrative and not comprehensive. But I would hope that an analysis on some such basis of purpose would help to a wider comprehension hy the public as a whole of wbat might be called the philosophy of these tribunals or procedures, and the varying purposes for which they are intended.

8. It may well be that this analysis would, incidentally, bring out the extent to which such criticisms of tribunals as have been most noticeable, are in fact largely concerned with issues the very nature of which is inherently controversial and difficult (e.g. land: the requisitioning of land, and the use of planning powers).

9. I think that the Committee may find their task made more difficult by the amazing variety of procedures and types of tribunals which will be reported to them. It is often difficult to see why one procedure has been laid down by

Parliament to deal with a certain type of case and a different procedure for what seems at first sight to be cases of the same general nature or character. It is tempting to argue that the reason for the difference often lies, not in any difference in the subject matter dealt with, but in the different models which may have found favour with Parliament at different periods. No doubt some such explanation may lie behind many of the differences encountered. But I believe that close acquaintance with the subject matter will often show considerations not always apparent on the surface which justify different methods.

10. My own view would be to regard with some scepticism any proposal to effect changes in any procedures which have been in force for many years and have given satisfaction, merely in order to fit all administrative tribunals and administrative procedures into some orderly scheme of a few well defined types. I say this although I recognise that, were all tribunals easily classifiable into a few main groups, it might facilitate steps such as are mentioned above as being likely to bring about a wider comprehension by the public as a whole of the philosophy of these tribunals.

Treasury Chambers,
Great George Street, S.W.1.
10th February, 1956.

APPENDIX

Development of Tribunals since the Donoughmore Enquiry

The particulars supplied by Departments do not lend themselves to tabular statement. But the following shows the general trend in recent years:

1. National Assistance Board

Before 1935	No Tribunals
Now	152

11,155 cases were heard in 1954: as many as 54,727 were heard in 1940.

2. Ministry of Labour and National Service

Tribunals dealing with aspects of National Service first came into existence in 1939: they now derive from the National Service Act, 1948.

Military Services (Hardship) Committees:
65 in number.
4,250 cases were heard in 1954.

Reinstatement Committees:
65 in number.
181 cases were heard in 1954.

3. Ministry of Agriculture, Fisheries and Food

There are now 61 County Agricultural Executive Committees, 54 Local Wheat Committees, 9 Agricultural Land Tribunals and a number of other Tribunals.

4. Ministry of Housing and Local Government

Between 1928 and 1930 the number of *Compulsory Purchase Orders* confirmed under the Housing Acts was about 30 a year. Between 1952 and 1954 the number was about 600.

Between 1928 and 1930 the number of *Planning Appeals* ran at 100 to 150 a year: the figures for 1952-1954 were 3,526, 3,511 and 4,928.

The Ministry are also responsible for 55 *Rent Tribunals.* 8,000 cases were heard in 1954.

Mr. S. A. de Smith

MEMORANDUM ON JUDICIAL CONTROL OF ADMINISTRATIVE TRIBUNALS

1. The purpose of this memorandum is to consider the defects of the present procedural devices by which the High Court exercises a supervisory jurisdiction over administrative tribunals where no provision for an appeal exists, and to offer some general suggestions for reform. These suggestions will not, in general, be directed to enlarging the total *scope* of judicial review, but rather to making judicial review more effective in the existing context of substantive law.

2. The principal remedies by which the acts and decisions of administrative tribunals are challenged in the superior courts are the orders of certiorari, prohibition and mandamus. They originated as prerogative writs, used for general administrative purposes and for the control of inferior jurisdictions. In modern administrative law, certiorari will issue to a statutory tribunal to bring up its decision before the Divisional Court of the Queen's Bench Division, to be quashed on any of the following grounds: that the tribunal has acted without or in excess of its jurisdiction, or has issued a written decision that exhibits a patent error of law on its face, or has broken the rules of natural justice (*i.e.*, that the parties affected by its decision must be given notice of the hearing and a fair opportunity to be acquainted with material prejudicial to their case and to put their own case; and that the members of the tribunal must not be affected by pecuniary interest or likelihood of bias), or has made a decision procured by manifest fraud or collusion. Prohibition will issue to prevent a tribunal from acting without or exceeding jurisdiction, or from breaking the rules of natural justice. Mandamus will issue to order a tribunal to hear and determine a case that it has, in terms or in substance, refused to hear.

3. The achievement of the superior courts in adapting these remedies for the purpose of supervising the conduct of administrative tribunals is a striking illustration of the capacity for development that is inherent in the common law. It is also a matter of constitutional importance; for if the ordinary courts had not assumed this function, a distinct administrative authority would have had to be created to discharge it. But by the middle years of the nineteenth century the prerogative writs had become encumbered with a mass of technicalities, many of which still survive. A further difficulty has arisen out of the fact that the principles governing certiorari and prohibition were evolved in relation to inferior courts in the strict sense of the term. Although the superior courts have extended the availability of the remedies to administrative tribunals exercising functions of a broadly judicial character, the remedies have not proved to be readily adaptable for the control of the discretionary functions of those tribunals. Moreover, the procedure for obtaining the remedies is not altogether satisfactory. A measure of simplification was brought about by the Administration of Justice (Miscellaneous Provisions) Acts, 1933 and 1938 (the enactment of which may have been prompted by the recommendations of the Committee on Ministers' Powers, Cmd. 4060 (1932), pp. 62, 99, 117), but the present procedure leaves room for improvement.

4. The law relating to certiorari, prohibition and mandamus has often been criticised in recent years. In the United States, where they are known as "extraordinary remedies", the author of the leading textbook on administrative law has written: "An imaginary system cunningly planned for the evil purpose of thwarting justice and maximising fruitless litigation would copy the major features of the extraordinary remedies" (K. C. Davis, *Administrative Law* (1951), p. 718). Comparable views, couched in more restrained terms, have been expressed by several English writers in the light of this country's experience. Some of the criticisms derive from views held about the proper scope of judicial review; and the critics are not always in accord with one another. The following criticisms derive not from the views held by the present writer on the proper scope of judicial review, but from his views on the inadequacy of certiorari and

prohibition, in particular, as means of securing justice for persons aggrieved by such acts of administrative tribunals as are *prima facie* contrary to the law as it now stands.

5.—(1) An application for any of the orders must be made within six months of the occurrence of the impugned act, unless the court in its discretion grants an extension of time. This period is, in general, too short, although in specific instances it may be in the public interest for Parliament to prescribe a brief period for the institution of proceedings. A party aggrieved by the decision of a tribunal may be ignorant of his legal rights; or he may not become aware of the facts which entitle him to institute proceedings until after the six months' period has elapsed (cf. *Barnard* v. *National Dock Labour Board* [1953] 2 Q.B. 18). The special periods of limitation applicable to other forms of civil proceedings against public authorities were abolished by the Law Reform (Limitations of Actions, etc.) Act, 1954.

(2) The proceedings on applications for the orders are brought in the Divisional Court of the Queen's Bench Division. The proceedings are by affidavit; cross-examination of deponents is allowed only in very exceptional circumstances; the rules governing discovery of documents in other forms of proceedings are not fully applicable. These rules of procedure serve to expedite the hearing of applications; but they would appear to open up the possibilities that relevant evidence may not be brought before the court and that neither the court nor the party aggrieved may be fully apprised of material documentary information.

(3) Certiorari and prohibition will issue only to bodies that are held to be acting in a judicial capacity. The courts have given a liberal interpretation to the meaning of "judicial" for this purpose, and it is unlikely that an application for certiorari to quash the decision of a distinct administrative tribunal which is shown to have exceeded its jurisdiction will be refused solely on the ground that the tribunal was not acting in a judicial capacity. Nevertheless, certiorari has been refused in some recent cases involving the revocation of licences by statutory authorities on the ground that the authority was under no duty to act judicially. And it is surely unsatisfactory that the very possibility should exist that a person directly aggrieved by a usurpation of power by a statutory body should be required to go away from the High Court with his wrongs unredressed merely because he has sought a remedy that is appropriate only to challenge the exercise of "judicial" functions.

(4) It is far from clear to what extent certiorari is an appropriate means of challenging the exercise of discretionary powers by an administrative tribunal. It is a well-known principle of law that in the exercise of a discretion relevant considerations must be taken into account and irrelevant considerations disregarded. But if a tribunal infringes this principle, it is doubtful whether certiorari will issue to quash its decision. In two modern cases, where applications were made for certiorari to quash the decisions of rent tribunals on the ground that the tribunals had paid regard to irrelevant factors and disregarded relevant factors in fixing rents, the Divisional Court held that certiorari was not the appropriate remedy because such errors did not constitute excesses of jurisdiction. Here one observes the restrictive influence of the traditional conception of certiorari as a means of redressing jurisdictional excess committed by courts of law, which did not normally possess discretionary powers of this character. The two decisions that have been mentioned may have been based on a wrong principle, but they have not been disapproved. Mandamus has sometimes issued to a tribunal that has based its decision on irrelevant considerations; but the cases on mandamus are contradictory and the state of the law is obscure. It is difficult to see why the courts should ever disclaim competence to quash the discretionary decision of a tribunal which they have found to be based on irrelevant considerations.

Although it is recognised that a body exercising a discretion acts *ultra vires* when its decision is such as no reasonable body of persons could have made, it would seem that certiorari will not issue on this ground to quash the decision. Indeed, there appears to be no reported case in which certiorari has issued to quash a decision for unreasonableness even where the authority has been expressly required by statute to act on reasonable grounds.

6. It would be possible to amplify the points already made, and to add others of a somewhat technical character. So far as the rules of substantive law are concerned, it seems clear that certiorari, which is the remedy most commonly employed for judicial control over administrative tribunals, has substantial defects as a means of providing redress against the abuse of discretionary powers. Nevertheless, no real hardship would exist if there were an effective alternative remedy which could be applied for in conjunction with certiorari. A remedy which covers much of the same ground as certiorari is the declaratory order. It is possible to bring an action for a declaration that the decision of a statutory tribunal is void for excess of jurisdiction; it appears, further that the courts may award a declaration that a tribunal's decision is void because it has exercised its discretion on the basis of irrelevant considerations or without regard to relevant considerations or because it has exercised its discretion capriciously or in bad faith. There are certain limitations (as yet still ill-defined) on the permissible scope of a declaratory order; and such an order has no coercive effect upon a tribunal. Moreover, the courts have affirmed that they will exercise their discretion to award declaratory orders sparingly. But it is unnecessary to dwell upon the possible advantages and disadvantages of bringing an action for a declaration against an administrative tribunal or the members thereof, for there is one factor that overshadows all others: it is impossible to combine an action for a declaration with an application for certiorari or prohibition in the same proceedings. An action for a declaration must be heard before a single judge of the High Court; an application for certiorari or prohibition must be heard in the Divisional Court of the Queen's Bench Division. The party aggrieved by the decision of an administrative tribunal from which there is no statutory right of appeal to a superior court must therefore make his choice of remedy at the initial stage; and he chooses at his peril. At present there is no likelihood that the scope of the declaratory order (even coupled with an injunction) will be or can be so extended by judicial decisions that it will come to supplant certiorari and prohibition. Until the Legislature intervenes, therefore, we shall continue to have two sets of remedies against the usurpation or abuse of power by administrative tribunals—remedies which overlap but do not coincide, which must be sought in wholly distinct forms of proceedings, which are overlaid with technicalities and fine distinctions, but which would conjointly cover a very substantial area of the existing field of judicial control. This state of affairs bears a striking resemblance to that which obtained when English civil procedure was still bedevilled by the old forms of action.

7. It is submitted that a thorough-going reform of the law relating to judicial remedies in administrative law is overdue. Comprehensive recommendations on the matter may fall partly outside your Committee's terms of reference; but it is improbable that Parliament will be moved to act at all without the impetus of proposals put forward on the initiative of an independent body which has given detailed attention to the problems created by administrative justice. The following suggestions are put forward for consideration by your Committee:—

(i) The orders of certiorari, prohibition and mandamus should be abolished and replaced by orders to quash, prohibitory orders and mandatory orders respectively. The powers of the courts to make declaratory orders in relation to the decisions of administrative tribunals should be retained.

(ii) The procedure upon applications for the proposed new orders should be broadly assimilated to that followed in an action for a declaration. Modifications may be thought appropriate in the light of the experience of procedure upon statutory applications to quash orders under the Housing, Town and Country Planning and Acquisition of Land Acts.

(iii) The period within which an application for an order could be made should be twelve months (in the absence of statutory provision to the contrary), the court having a discretion to allow an extension of time.

(iv) One or more judges of the Queen's Bench Division should be specially assigned to hear applications for the orders.

8. The main benefit to be expected from these reforms would be the almost complete elimination of the risk of losing a good case through reliance on the wrong remedy. If one wished to impugn the determination of a tribunal for irrelevancy, capriciousness or bad faith, one would simply apply to the High Court for an order to quash. It would not be necessary to establish that the decision was of a judicial character; though the court would doubtless be reluctant to interfere with decisions that have hitherto been characterised as purely administrative. The courts would also have the opportunity to build up a body of precedents unencumbered by the anomalous distinctions (*e.g.* in the rules relating to *locus standi*) which are found in the prerogative orders; though here again there would not be a clean break with the past, for most of the existing principles are rational and in conformity with public policy and would certainly continue to be applied. The reforms suggested would not, therefore, effect any dramatic transformation of the law. They would, however, bring the machinery of the law up to date, and they would contribute to the removal of defects of long standing which have already caused English administrative law to be compared unfavourably with the leading continental systems.

Mr. Douglas Frank

Under paragraph "A" of the terms of reference

There are a considerable number of Tribunals dealing with matters relating to land and property. Some of these Tribunals such as the Lands Tribunal are held in high repute and others are the subject of dissatisfaction. An examination of these various Tribunals, and my experience of them, has led me to the conclusion that dissatisfaction springs from one or more of the following cases:—

(*a*) Lack of professional qualifications and experience.

(*b*) Absence of judicial attitude.

(*c*) Local prejudice.

(*d*) Excess of informality.

(*e*) Failure to give reasoned decisions.

(*f*) Inaccessability.

The success of the Lands Tribunal can be attributed to the fact that it suffers from none of the above disabilities. The primary reasons why it does not is that its members are full-time and consists of Lawyers and Surveyors of high standing.

All the Tribunals dealing with property, some of which I have listed in an appendix hereto, have functions peculiarly within the province of the Surveyor subject to matters of law. It seems to me that if all property Tribunals were constituted on the lines of the Lands Tribunal the reasons for dissatisfaction would disappear. However, that would be impracticable and extravagant. Nevertheless, in my opinion the jurisdiction of all Tribunals dealing with land and property should be transferred to one Tribunal constituted on the lines of the Lands Tribunal and covering, say, each County Court area. Each such Tribunal could be composed of say a Lawyer and two Surveyors with power to appoint Assessors for special types of cases such as those concerning the valuation of minerals. The members of each Tribunal would be appointed by the Lord Chancellor and each Tribunal would have a fulltime clerk (the clerks of the Valuation Courts would be suitable). It is for consideration whether there should be a right of appeal to the Lands Tribunal. Conversely several types of cases such as, application for the removal or modification of restrictive covenants, at least could be initiated before the local Tribunal.

Under paragraph "B" of the terms of reference

In my experience the present procedure relating to Town Planning appeals and enquiries on compulsory purchase orders is on the whole satisfactory. I have not found that the failure to publish Inspector's reports causes dissatisfaction; Minister's decisions are accompanied by reasons and a summary of the cases put forward by the parties. The suggestion that the procedure is unsatisfactory, in that justice may not appear to have been done, is without foundation. Publica-

tion of the Inspector's reports would cause even greater delay than exists at present, would be expensive, and would lay Ministers open to such political pressure as to hamper them in the exercise of their functions.

Although I consider the present procedure in general to be satisfactory the presentation of evidence by Government Departments, particularly the Ministry of Agriculture, in the form of a letter is most unsatisfactory. In my view this procedure can only be justified in cases where National Security is concerned.

APPENDIX

Class A Judicial Tribunals

1. County Agricultural Committees ...	Supervisory Orders.
2. Agricultural Lands Tribunals ...	Dispossession of farmers. Bad farming certificates. Retention of requisitional land.
3. Arbitrator (Agriculture Holdings Act, 1948).	Terms of tenancies. Variations of rents. Compensation.
4. General Claims Tribunal	Compensation for requisitioning of and doing work on land.
5. Local Valuation Courts	Assessments for rating.
6. Lands Tribunal	Compensation for compulsory purchase, injurious affection, planning, and war damage. Restrictive covenants. Appeals from Local Valuation Courts.
7. Magistrates	Private Street Works. Planning enforcement notices. Public Health licences and consents.
8. London Building Tribunal ...	Lay out of streets, approval of buildings, etc.
9. Arbitrators (Public Health Act, 1936).	Compensation for water mains, etc.

Mr. B. Luckham

MEMORANDUM ON APPEALS FROM ADMINISTRATIVE TRIBUNALS

The Extent to which Appeals should be allowed

So that the citizen may clearly understand his rights under, and the working of, administrative justice it is desirable that there should be as much uniformity as possible in the structure of the system. To secure the application of a higher level of experience or responsibility and the opportunity for 'second thoughts' on quasi-judicial decisions, the right of appeals should exist even against routine or minor functions.

Against this desirable or popular request for rationalisation however, must be placed the following arguments:—

Firstly, the practicability of submitting the whole range of administrative power to further question and delay;

Secondly, the failure of an authority in the first instance to accept responsibility to judge a case on its merits, which might result by knowing that its decision will almost certainly go to appeal (I have first hand knowledge of this as a member of a local authority);

Thirdly, that when appeals are the regular practice this will detract from the authority making a decision in the first instance.

However the value of an appeal to protect individuals or minorities is very considerable and measured against these criticisms should generally be available wherever practicable and ought certainly to be so in those cases which diminish existing freedoms, rights or prospects.

Primary Departmental Decisions

In many cases the formality of a public enquiry or tribunal will not be necessary at the lowest level of departmental discretion and so a choice should be given to an appellant whether to accept a straightforward administrative decision or to have a tribunal.

Where no tribunal is held, and natural justice obviously could not be seen to be done, both parties should see a statement of the other's case and have the opportunity to reply in writing, and the award and reasons for it should be given to them. This method might be used advantageously over local authority planning decisions or social insurance claims. It is assumed that where tribunals or enquiries are held the procedure of natural justice would be observed.

Higher Departmental Tribunal

In either case from this lower departmental level there ought to be a right of appeal to some higher authority. It is suggested that this should be to a tribunal with members appointed for technical knowledge by the Minister and a chairman, with some legal training, appointed by the Lord Chancellor. Only in this way could the Minister really be responsible for the decisions made by it.

Appeals to such a tribunal should be both on law and award. Generally it should be held in public with right of counsel to attend The tribunal should be empowered to amend or reject the lower award. It should also be allowed to refuse to make an award where it considered that the previous decision was purely a minor Ministerial administrative act, or to refuse to grant a hearing where it considered that there was no prima facie ground for appeal. This would prevent frivolous complaints against elementary departmental administration but by enquiry into circumstances would be a watchdog for legitimate but otherwise inexpressible grievances against Government departments.

By publishing its reasons the tribunal would establish precedents for its conduct. In time it might be considered desirable to allow legal aid for the hearings.

Further Appeal

Such a method of appeal within a Government department ought to be generally acceptable, it is to a further supra-Departmental level that controversy may intervene. The following arguments seem relevant:—

(1) It is now accepted that the division of legal power into executive, judicial and legislative is unrealistic and that the proper balance of power is more important.

(2) That of necessity statutes tend to be phrased in general terms of policy.

(3) That this development and the growth of delegated legislation, administrative justice and judge-made law have tended to strengthen the Executive or Judiciary at the expense of the influence of Parliament.

(4) That the judiciary, by tradition or outlook, are unwilling or unsuitable to interpret broadly defined statutes.

(5) That Ministers should take ultimate responsibility for acts made in their names.

(6) That Parliament is by tradition the ultimate judge—The High Court of Parliament.

(7) That the House of Commons, being an elected body, is more responsive to public need and changing requirements.

From this I would suggest that appeals should he divided into two sorts:—

(1) That the proceedings in the higher Departmental Tribunal were not held in proper form i.e. natural justice violated or tbat facts material to the issue were withbeld or have since come to light—which would go to the High Court.

(2) That appeals as to whetber the decision of the higher Departmental Tribunal was within the competence of the Minister, by the intention of the legislature as defined in the appropriate statute, should go to a Parliamentary Tribunal.

These two Appeal Courts—tbe High Court for law and a Parliamentary Tribunal for interpretation—would therefore not consider the grounds of a case or the actual decision because they would not have the technical competence or responsihility. but would only determine whether the conclusion was properly made or that the decision was *intra vires* respectively. If they accepted the appeal they would order the higher Departmental Tribunal, if appropriate, to reconsider and make a new award.

The Parliamentary Tribunal should be composed of three persons, the Chairman heing the Speaker or his Deputy and the two others, one each from panels of legally trained members elected from each side of the House of Commons and serving in rotation. Since the Speaker, as Chairman of the House, must already make quasi-judicial decisions and the House is the final arhiter of its rights and responsibilities subject to the will of the electorate, there should he little objection to this extension or revival of its powers.

Appeals from the higher Departmental Tribunal should not be too many, certainly those to a Parliamentary Tribunal should he few, so that it would not he an unreasonahle addition to its work. Where the Minister has in the past appeared as both judge and a party, e.g. in siting new towns, the existence of some appeal to Parliament ought to be welcome.

Appeals from the higher Departmental Tribunal should be hy right hut perhaps in the case of those to the Parliamentary Tribunal this right might be waived by Cabinet veto. The Parliamentary Tribunal would be final but if it felt that the award or Minister's act were beyond his competence, but in the current public interest, then it would advise Parliament so that if desired, legislative change might be made for the future or an indemnifying act passed. Appeals from the High Court might be continued to the House of Lords as at present.

An injured appellant should retain the right to obtain redress under the Crown Proceedings Act 1947 or for wilful malice by a departmental tribunal.

Conclusion

It seems evident that the only real safeguard of the individual or public interest will he in the attention of elected representatives and to effect this I have suggested the foregoing, hoping that the necessity for a special administrative court of justice may be avoided.

Two particular matters in which proper appeal procedures do seem clearly necessary, and specially worthy of mention are: from the decisions of prison visiting committees who may actually award punishment (without magistrates or legally trained persons necessarily heing present) and with no formal appeal: and the other to protect the rights of public servants dismissed for security or disciplinary reasons.

Mr. F. R. McQuown(1)

1. I wish to make it clear that the views expressed in this memorandum are entirely my own and are not intended to represent the views of any other person or body. It is especially necessary to insist on this because I shall be speaking a great deal about Pensions Appeal Tribunals. I am connected with an association which has considerable dealings with them, and it may or may not be the case that we may wish to criticise certain matters in relation to these Tribunals in another communication.

2. I do not propose here, therefore, to go into any detailed discussion of Pensions Appeal Tribunals, but rather to consider them in broad outline to see whether they can provide an example to be followed or a warning of what to avoid when considering the setting up of Tribunals generally. I might here add that I have appeared as Counsel in about a thousand Pensions appeals, but my practical experience of other Tribunals is not of course of that order of magnitude.

3. Pensions Appeal Tribunals are somewhat peculiar in that the function they perform, namely, deciding whether or not a person is entitled to a pension from the State, would appear at first sight to be an administrative one, but they act in a judicial manner, that is to say they interpret a known public enactment, the Royal Warrant, in the light of facts found by them in each particular case. (Actually the Royal Warrants and Statutory Instruments are not Acts of Parliament, but the principle is the same.)

4. It is curious that the Rent Tribunals, whose function is to determine certain matters between two individual citizens, a function which would appear to be entirely judicial, in fact act in an administrative manner. One Chairman of a Rent Tribunal even went so far as to say, in a letter to *The Times* of 28th July, 1950, that they "do not give decisions of law or of fact".

5. However, I have no doubt that the Committee will hear quite enough of Rent Tribunals from other sources, and I mention them only to point out the curious piecemeal way in which Tribunals have been created, and to stress the need for a clear coherent policy in respect of all Tribunals.

6. Pensions Appeal Tribunals are unpopular, because it is often their duty to refuse a pension to a person who has served in the armed forces. The natural reaction of most people is that anyone who has served is deserving of generosity, and a Tribunal which refuses a pension to an ex-serviceman is an easy target for attack. It will be seen, from the reasons which I shall give later, that in regard to the vast majority of cases, I do not consider this unpopularity to be justified. If there is complaint to be made, it is in respect of the laws which the Tribunals are bound to administer rather than the way in which the Tribunals administer that law. For instance, the widow of a man who was pensioned in respect of a disability arising from the first World War, must be refused a pension unless she can prove that her late husband's death was *wholly* due to the disability for which he was receiving pension, such disability having resulted directly from War service (articles 16B and 17B of the 1921 order in Council).

7. Actually the Tribunals place a reasonable construction on the word "wholly", and thus the law is not as harsh as it might be, but even so it is harsh enough to cause injustice.

8. The above remarks are not a digression, but, I submit, draw attention to what can become a serious evil. It is that Government may enact an unjust law and set up a Tribunal to administer it, thus ensuring that popular wrath, never very discriminating, is directed against the Tribunal as the cause of the public misfortune, rather than Government which is the true cause of it. Certain aspects of Compulsory Purchase of land may even now fall into this category.

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(1) Mr. McQuown is an honorary Counsel to the Officers' Association *q.v.*

9. My main reason for referring to the popularity or otherwise of tribunals is, however, to point out that a good Tribunal may be unpopular through no fault of its organization. Conversely, a bad Tribunal may be popular merely because, for example, it takes valuable benefits from a minority and gives them to a majority.

10. I shall now leave the matter of the substance of the law which is administered by the Tribunals, and consider in detail with comments the method of administration. For the sake of simplicity I shall omit all reference to Assessment Tribunals, and consider only Entitlement Tribunals, that is to say those which determine whether a pension shall be paid or not, and are not concerned with the amount of the pension as are Assessment Tribunals.

11. In the first place, the law which the Tribunals have to administer is known to everyone. It is set out in the Royal Warrants and Statutory Instruments, and although the Minister of Pensions (I shall use that term to describe the Minister who happens to be perfonming the function of a Minister of Pensions, whatever the official name of that Minister may be from time to time) has a certain discretion in awarding a pension, the Tribunals have no discretion in the matter, but merely decide whether the facts of a particular case entitle the Appellant to a pension as a matter of law.

12. In my submission, this is entirely as it should be, since the moment a Tribunal is invested with a power of discretion, the members cannot avoid being subject to directions and other interference as to how the discretion is to be exercised, and their independence disappears. Such discretion as may be considered desirable should always lie with the Ministry concerned, and provided it does so, there would seem to be no harm in its being exercised, assuming of course the matter is one that rests between the State and the individual and does not affect the rights of individuals *inter se*.

13. In practice, the Ministry of Pensions decide whether a person is entitled to a pension as a matter of law, and if not whether any discretion should be exercised or not. If the decision is adverse to the appellant, he is told he may appeal to a Tribunal.

14. An important point is that the Tribunals are not appointed by the Minister of Pensions. The maximum degree of independence is assured by causing them to be appointed by the Lord Chancellor, and I submit that this principle is one which should always be followed. The Tribunal consists of three persons, namely a chairman with legal qualifications, a doctor and an ex-serviceman of similar status to the person whose appeal is to be considered (e.g. a male ex-officer for an officer's appeal, a woman ex-ranker for a woman ranker's appeal and so on). I can find no criticism of this principle as stated so far, but I am not altogetber satisfied with the terms of the Tribunal member's appointments.

15. To avoid misunderstanding, I state at once that I consider the persons actually serving on the Tribunals are in fact competent, but if there is to be any large increase in the personnel of Tribunals a serious problem may arise. To take the legal chairman as an example, it may be stated at once that their salaries are poor in comparison with most legal appointments, and they are liable to find themselves redundant at short notice. It is hard to imagine that a practising barrister or solicitor of any standing would consider the appointment for a moment, and thus most of the chairmen are retired judges of various kinds who are already able to live on their pensions. At present, there are enough of them of high calibre to ensure that the Tribunals work well, but this may not always be so. Any further extension of the work of Tribunals might thus mean that the personnel would be of poor quality.

16. To return to procedure. On a person intimating that he wishes to appeal, there is sent to him a document called a Statement of Case, which begins with a statement of what the Tribunal has to decide, continues with a statement of all relevant facts known to the Ministry, and concludes with a medical opinion and a short statement of the reasons for rejection, thus bringing all the facts before both the appellant and the Tribunal, and indicating precisely what points the appellant will have to meet. (The only exception is where it is thought that knowing all the facts of his medical condition might

harm the appellant, in which case he is persuaded to appoint someone to represent him, and the representative is supplied with the full facts unknown to the appellant, by the appellant being given a censored version.)

17. I should submit that this procedure is highly desirable before all Tribunals, and the fact that the Tribunal is applying known law to evidence known to both parties is a most valuable safeguard against injustice.

18. The appellant may reply in writing to the Statement of Case, and may submit further evidence in writing. Though he is nominally given only 28 days to do this, the time limit is not insisted upon and the only penalty for exceeding the time is delay in the hearing of the appeal. If the written evidence is medical, the Ministry are given time to reply to it, and the appellant may again submit written evidence, and so on until neither side wishes to add anything further.

19. A time, day and place of hearing is then fixed, and normally the case comes on at approximately the correct time. Cases are sometimes delayed because an earlier case in the list is unduly long, but if a long case is suspected by the Tribunal beforehand extra time is allowed, and delays are very rare and practically never the fault of the Tribunal—in fact I cannot recollect one case where they were at fault.

20. The actual hearing closely follows normal court procedure, save that there is no oath, the parties and advocates remain seated, and the appellant has the first and last word whether the onus is upon him or not. The appellant may give evidence and call witnesses, and so of course may the Ministry, but in fact the Ministry never calls witnesses unless the appellant calls a doctor to give evidence (or is a doctor himself), in which case the Ministry has a doctor available to deal with any medical point raised.

21. The appellant may be represented by any person, whether legally qualified or not, and the Tribunal assist the appellant to put forward his case if necessary.

22. It is an important point that, in contrast to some Tribunals, Pensions Appeal Tribunals permit proper cross-examination.

23. When the parties have closed their cases they withdraw, and return after a few minutes for the decision. Nearly always the Tribunal decide the case then and there, but sometimes they adjorn for further evidence, submit the case to a medical man of their own choosing (his decision does not bind them), or reserve their decision which is sent by post after a few days. No legal costs are awarded by the Tribunal.

24. It might be thought that the above provided every possible safeguard against injustice, but in fact there is one more. An appellant who considers that the Tribunal have erred on a point of law may appeal to a Judge of the High Court nominated for that purpose by the Lord Chancellor. In order to do so he must obtain leave to appeal either from the Tribunal or the nominated Judge. If he fails to get leave from either, he must get a certificate from Counsel that there is in fact a point justifying an appeal.

25. The practice is that if an appellant gets leave to appeal, which he may even do at a hearing on Counsel's certificate, he is paid his reasonable costs whatever the result of the appeal.

26. An important point is that the appeal to the High Court is a far cheaper and less uncertain method of correcting an error of law than the expensive *certiorari* procedure which is all that is available for questioning the findings of some other Tribunals.

27. The decision of the nominated Judge is final, and there is no further appeal, which I submit is an advantage in that it prevents matters becoming too expensive, and most people are satisfied with a High Court Judge's ruling.

28. In fairness I should say that some time ago there developed, curiously enough by reason of the appeal to the High Court, a system whereby certain disabilities were classified by means of "signpost" cases. I have always been strongly opposed to this system. I do not wish to go into the matter here, which is a somewhat complicated one and could scarcely arise except in cases with a medical aspect, and this is beyond the scope of a general memorandum on Tribunals.

Conclusion and Summary

29. I have now sketched the procedure before Pensions Appeal Tribunals, and criticised where I could find anything which I thought was wrong or could lead to abuses, and I should like to make the following comments.

30. It has been seen that a Tribunal, which is performing a function apparently of an administrative nature, is in fact capable of performing that funotion in a judicial manner. It should therefore not be difficult to ensure that other Tribunals, for example Rent Tribunals, should also act in a judicial manner. In fact, where the function is actually of a judicial nature, as in the case of Rent Tribunals, there is no possible excuse for their not functioning judicially.

31. I would tentatively suggest that some of the essentials of a good Tribunal are as follows:—

(1) The Tribunal must be entirely independent of the Government Department concerned, if any.

(2) The members of the Tribunal must have such pay and oonditions of service that good people are attracted to serve.

(3) The Tribunal should enforce known laws, and their discretion should be reduced to a minimum. Any discretionary powers should be reserved to the Minister concerned, if any.

(4) All the evidence which may affect the mind of the Tribunal should be known to both parties, and there should be no secret instructions to the Tribunal.

(5) The question of whether a party may be represented by unqualified persons should be considered in relation to the subject matter of the appeal. Costs, if awarded, should follow the event, but in some cases it may be better that costs should not be awarded at all.

(6) The hearing should be conducted as far as possible in accordance with the normal procedure in Courts of Justice.

(7) There should be an appeal to the High Court on a matter of law only. In a dispute between a Government department and an individual, the individual should be awarded his costs in any event if either (*a*) The Government Department is the appellant or (*b*) The Judge certifies that it was reasonable to appeal.

32. In conclusion, I suggest that the *ad hoc* setting up of Tribunals should cease. It would be far better if there were a central board of Tribunals under the Lord Chancellor, oonsisting of lawyers, doctors, surveyors, etc., from whom Tribunals oould be selected to deal with any matter which might be referred to them by Act of Parliament. It would be a great pity to interfere in any way with the existing Pensions Appeal Tribunals, but it might be that the present organisation of these Tribunals could be extended to take in other matters.

33. It will be remembered that I have advocated that discretion should be exercised by the Minister and not by the Tribunal, but I should like also to urge as a corollary that where possible disputed questions of fact should be decided by Tribunals and not by the Minister. There may be a vast number of such cases, but I shall give one example. If a widow is separated from her husband at the time of his death, she may, by article 28 of the Royal Warrant, be awarded a reduced pension at the discretion of the Minister if certain conditions are fulfilled. But by article 26, if the separation was, in the opinion of the Minister, caused by the Husband's mental instability arising from disability due to service, she has the full pension. While maintaining the discretion of the Minister, I suggest that the question of fact under article 26 is one eminently suitable for appeal to a Tribunal, which at present has no power to hear it.

34. The Royal Warrant referred to in this memorandum is Cmd. 7699 dated 24th May, 1949. It has been amended, but the amendments do not affect the parts referred to herein. It relates to the army, but the other Services have instruments in identical terms.

Mr. H. A. Munro

NATIONAL INSURANCE LOCAL APPEAL TRIBUNALS

1. I am one of the Chairmen of the Liverpool National Insurance Local Appeal Tribunal, under the National Insurance Acts, and the National Insurance (Industrial Injuries) Acts.

2. I was appointed by the Minister in December, 1950, until 30th June, 1953. I was then re-appointed until June, 1956.

3. My experience (confined to the Liverpool district) leads me to believe that the law governing the organisation and membership of these tribunals now needs radical improvement. The Ministry officials, as I know, are alway anxious to do all in their power to help the public, but in my opinion the Acts and Regulations create a type of tribunal totally unsuited for appeal work.

4. This view assumes that the law of National Insurance and Industrial Injuries remains in its existing highly-complicated state, or becomes (as may be expected) still more complicated. On that assumption I will suggest that it is unjust to the public that the appeal tribunals should continue on their present basis, and, in particular, that they should continue to include lay members who know little or nothing about National Insurance law.

The Tribunal Members

5. Each of the tribunals (there are very many of them; all over England, Scotland and Wales) consist of three members, all appointed by the Ministry. The chairman need not be a lawyer, and at one time there were quite a number of lay chairmen, but the tendency is to appoint lawyers. The two other members are people without legal qualifications or knowledge; one is selected by the Ministry from an employers' panel, the other from a workers' panel. The chairman has nothing to do with the selection, and does not know in advance who is going to sit with him. The two lay members can outvote the chairman. The chairman is paid (£4 4s. 0d. per sitting), but the lay members give their services. In the chairman's absence, the tribunal cannot function. If one or both the lay members are absent, appeals can only be heard if the claimant consents in writing.

6. I know from experience that the Ministry takes considerable care in the selection of tribunal members, both legal and lay, but I suppose that the process of selection must be difficult, because the members cannot be put through preliminary tests of knowledge of Insurance law, and because (in National Insurance cases) the tribunal proceedings are held in private, and therefore cannot be observed by Ministry officials, other than the Insurance Officers.

What the tribunals do

7. All the cases are either appeals against refusal of benefit, or, alternatively, questions about benefit which the Insurance Officer has found too difficult to decide, with the result that he refers them to the tribunal for decision.

8. This second type of jurisdiction is, in my opinion, open to criticism. It deprives the public of one appeal in the series (the appeal to the Local Tribunal), and it also tends to make the tribunal appear part of the Ministry. Moreover, it is not normally the duty of an Appeal tribunal to collect evidence, or to say what evidence should be obtained or produced, or to investigate a case prior to the hearing. There is also no certainty that the Insurance Officer will accept the tribunal decision, after he has referred his problem to the tribunal. A recent example of a reference, with a subsequent unsuccessful appeal by the Insurance Officer to the Commissioner, is *R (P) 16/55*.

9. Industrial Injury cases are not nearly so numerous as National Insurance cases, though (contrary to expectation) there are now more of them than there were under the Workmen's Compensation system. They are always regarded as important. Before 1948, the same type of case would have been tried before a County Court Judge. The tribunal hearing of an industrial injury case is open to public and press, and the claimant can be legally represented, if the chairman agrees to this, for special reasons.

10. In my opinion, industrial injury claimants used to get a better and fairer hearing before a County Court Judge than they do now before a tribunal, though no doubt one of the reasons for this difference is that, in a County Court, money was spent on the preparation and presentation of the cases. A County Court arbitration took place because the Employers' Insurance Company had rejected a claim, while a tribunal appeal takes place because the Insurance Officer has rejected a claim. The chief differences are that, first, the new law is more complicated than the old law; second, that the County Court Judge has far greater experience than a tribunal; third, that the claimant was usually represented by competent Solicitors and Counsel; and, fourth, that a County Court hearing was more painstaking and more precise about the evidence than that before a tribunal, where there is a rush to get through the work of a heavy list, and where the tribunal does not rise till it has finished the list. The result is that about half an hour is usually as much as can be devoted to a case which would have occupied a Judge for several hours.

11. That the new law is more complicated than the old law could readily be demonstrated to anyone familiar with Workmen's Compensation, by a glance at the *Index to Commissioner's Decisions,* published by the Ministry. To avoid going into detail, it may be enough to mention as an example that the extremely complex subject of "Special Hardship Allowance" did not exist under Workmen's Compensation.

12. Passing to National Insurance cases, these are very numerous, and cover the whole field of National Insurance law. The amounts involved are sometimes trivial, but sometimes in the region of hundreds of pounds. Whatever the amount, the claimant considers his case important. The simplest way to get an idea of the range of the tribunal jurisdiction, and of the complexity of the relevant law, is to examine the *Commissioner's Index.*

13. A curious situation often arises in appeals against decisions that claimants have not enough stamps to get benefit. They are called "contribution questions", and the tribunal has no jurisdiction to decide them. (This is shown by the Commissioner's decisions *C.I.* 21/48 (*K.L.*) and *C.I.* 28/48 (*K.L.*).) They are for decision by the Minister.

14. There are also several other questions which the Minister alone has power to decide, but they involve considerations too technical for this memorandum. A case where such a question came up is *R* (*I*) 79/54.

15. The Ministry has no right to refuse to list contribution appeals before the tribunal, and the correct course is for the tribunal to adjourn them, with a direction to the Insurance Officer to refer to the Minister for decision.

16. Naturally, this often annoys claimants, who have taken the trouble to come to the hearing, without knowing that their cases will not be heard, but there is nothing which can be done.

17. What often happens, however, is that the claimant has already admitted that he has not got enough stamps, though how he knows this is not clear, considering the complicated nature of the problem.

18. In that event, the Insurance Officer sometimes contends that there is no need to refer the question to the Minister, as there is now in fact and in law no "question". If the tribunal accepts this, the appeal must fail. The tribunal is, in effect, deciding that the claimant has given up the appeal, by his admission that he has no case, and that there is therefore nothing left before the Tribunal. I have, however, known several appeals where it has been found, on investigation by the Ministry, that a claimant who thought he had not got enough stamps was wrong about this.

19. I believe that it would be much better for the public if contribution questions did not come to the Tribunal, but went straight to the Minister, instead of taking up tribunal time which can ill be spared, not to speak of the secretarial work involved.

20. Another type of case where a good deal of time and expense could be saved, and a great deal of annoyance to the public avoided, is the appeal where a claimant has been a few days late in making a claim. I do not believe that an Insurance Company would (or could) often refuse a claim on this technical ground, nor do I believe that an arbitrator would readily uphold such a refusal. But the Ministry appears to take the view that its powers are more restricted, and the result is that quite a number of appeals are on the question whether there was " good cause " for lateness in a claim.

21. Reference to the *Commissioner's Index* will show that this subject of " good cause " has been elaborately examined and discussed, in numerous decisions, and that it is not at all easy to prove " good cause ", even for delay of a very few days. The Acts do not contain a definition of the expression, and the whole law is governed by precedent.

22. My opinion is that there ought to be much more flexibility in this matter (especially when the delay is only for a few days), and that the Ministry officials should have a wide discretion to decide what is good cause, and that there is " good cause " in a particular case, without it being necessary to reject a claim on that narrow ground, with the resultant appeal by an aggrieved member of the public to a tribunal which is tied by very strict precedent. In other words, I think that the Ministry should be allowed to act in the same way as would be done by leading persons in a good Insurance Company. If this were possible, it would lighten the tribunal work, and also eliminate a ground of public complaint.

The Inadequacy of the Tribunal

23. It cannot be overstressed that the main trouble about the tribunals is that they are *appeal* tribunals, whose work is to decide appeals from decisions of the Insurance Officers, by members of the public, on highly complicated and specialised legal questions. Nothing can be more misleading than the idea that the tribunals deal with simple little questions of fact, in a friendly non-technical atmosphere, where legal problems are almost non-existent.

24. Almost all claims to benefit depend on the interpretation of elaborate statutory provisions, modified or expanded by a massive set of regulations, and explained by large numbers of Commissioner's decisions which are binding precedents. It is always assumed by the Appeals Tribunals, against all claimants, that they know the Law, and that ignorance is no excuse. The explanation of this assumption is that claimants could have obtained knowledge of the law by consulting the Ministry (see *R (I)* 16/51 ; *R (U)* 5/52 ; *R (S)* 19/52 ; *C.W.S.* 3/48 (*K.L.*) ; *C.W.G.* 2/49 (*K.L.*) ; *C.S.G.* 9/49 (*K.L.*) ; *R (U)* 5/52 and *R (I)* 16/53 ; and contrast with the exceptional case *R (S)* 18/52).

25. On the other hand, great injustice may be done to claimants on appeal, if the tribunal itself does not know the relevant regulations and decisions. It must be emphasised that the Insurance Officer, against whose decision the appeal has been made, does his best to help the tribunal, by citing the statutory provisions and decisions which guided him when he made his decision, and that in this task many Insurance Officers are excellent, but it often happens that the result of the appeal depends upon the discovery, by the tribunal itself, of other provisions, or other decisions. It has to be borne in mind that no-one who possesses legal qualifications is allowed to assume the responsible post of Insurance Officer.

26. Moreover, it has to be remembered that there is a rule that the tribunal should not restrict itself to deciding the question at issue between the Insurance Officer and the claimant (as framed by the Insurance Officer in the appeal papers), but should also consider whether there is any other (new) ground upon which the appeal could be dismissed. For this rule I do not think there is any statutory authority, but an example of its application is *R (U)* 2/54.

27. Considering that the National Insurance claimants are prohibited from having legal assistance in presenting their cases, which means that the tribunal itself is not assisted by Counsel or Solicitors, with a professional duty to help the Court, it is manifest that the task of knowing the regulations and decisions

falls entirely on the tribunal. This means the chairman, because there are few who would expect the lay members to be acquainted with the subject. The panels are large, and lay members attend infrequently, and I would be surprised if any of them claim that they have much knowledge of National Insurance law. The conception behind the regulations appears to have been that those members would be judges of simple questions of fact, assisted by the chairman if it should happen that a legal point arose. It does not seem to have been envisaged that the appeals would depend upon complex considerations of the type well shown by the Commissioner's Index.

28. Further, there is no way of side-stepping the regulations and decisions. It is conceivable that the original idea of these tribunals was that they would execute a sort of palm tree justice, doing what was good, without bothering about law, or else making up their own law as they went along. If this is so, all one can say is that the Ministry would soon put such a tribunal right, by a series of appeals, and possibly by not re-appointing the members. Decisions relevant to this question are *C.S.G.* 9/49 (*K.L.*), *C.S.* 414/50 (*K.L.*), and *C.S.* 524/50 (*K.L.*). The House of Lords debated this, and kindred subjects, on 5th March, 1952 (Hansard, Vol. 175, No. 32, p. 516).

29. What is a Tribunal to do when trying an appeal against the decision of an experienced Insurance Officer, based on his careful consideration of about half a dozen complicated regulations. It is obvious that the easiest course is to accept what the Insurance Officer says, because, after all, he knows far more than any particular tribunal is likely to know. It is his job to do so, and he will certainly consider appealing if over-ruled. Suppose, however, that one gets a tribunal bold enough to differ from the Insurance Officer's interpretation of the regulations. Then the responsibility falls on the chairman, because I have never yet seen a case where a lay member was willing to suggest a legal construction of a regulation which differed from the Insurance Officer's construction. Still less can I conceive of a case where a lay member would know of some uncited regulation or decision which threw a new light on the problem, though this is often decisive in an appeal.

30. Of this need to refer to an uncited decision or regulation I could give innumerable instances, but one will suffice. Some time ago, I was chairman (not in the City of Liverpool) when a widow was appealing against the refusal of the Insurance Officer to allow a pension, under the Industrial Injuries Acts, for the death of her husband, which she claimed was the result of an industrial accident. The accident was a serious one, and probably it caused or contributed to the death, but the man had survived the accident for some months, and the Insurance Officer had ruled against the widow's claim, on the ground that "it is not proved beyond reasonable doubt that the death was the result of the relevant accident", or words to that effect. There was also, if I remember rightly, some medical evidence from a Ministry doctor, who had considered the case papers, and who reported that it was not certain that the death was the result of the accident. As usual in these tribunals, however, the doctor was not personally present, and it was therefore impossible for the widow to do what used to be normal (and so beneficial) in Workmen's Compensation cases; namely, cross-examine him.

31. In deciding that the widow could not prove her claim beyond reasonable doubt, the Insurance Officer was right. She could not reach that high standard of proof; a standard, as will be remembered, appropriate to criminal cases. Though sympathetic, and believing that the death was in reality due to the accident, the lay members thought that they would have to follow the law and dismiss the appeal. But, luckily for the widow, I happened to remember that the standard of proof in cases like this is that the balance of probability is in favour of the contention. This point I then put to the Insurance Officer, though I do not think it was understood by the unrepresented widow. I also drew the Officer's attention to the fact that the Commissioners had already so ruled, in *R (I)* 14/51, which by inadvertence had not been cited in our case papers. Ultimately, the Officer conceded that he had put the proof too high, and, on further examination of all the evidence, the tribunal allowed the appeal. Serious cases should not depend on pieces of chance like this.

32. It may be said that the example just given shows the function of the Chairman, but I maintain that it would be much better for the public if the whole tribunal had at any rate some idea of the relevant law.

33. Like practically all other chairmen, I do the work in time which I can spare from my practice. For the reasons already stated, and others which will appear later in this memorandum, it is very hard work, but I feel it is interesting, and not perhaps without some value. On the other hand, how much better in the interests of the public if the tribunal as a whole could deal adequately with appeal work.

34. When I was appointed, the Ministry sent a very large bundle of documents. These included the Acts, the Regulations, the numerous volumes of Commissioner's decisions, the official leaflets, and several other voluminous publications. Study of all these was (and is) a big job, and there is also a constant flow of new regulations and decisions. It is the most complicated and technical field of law with which I have ever had the misfortune to deal.

35. None of this study falls on the lay members, and one could give countless examples of the difficulties created by their unavoidable ignorance of the law. In appeals about industrial injuries, I have never sat with a lay member who had much idea of the wide meaning of the word "accident", as established in numerous decisions over the years by the Court of Appeal and the House of Lords, in favour of the workman. There is, indeed, a tendency to decide cases against the claimant, in circumstances where the same claimant would undoubtedly have succeeded on the same facts before a County Court Judge. A striking instance of this is *R (I) 18/54*, where a Local Appeal Tribunal rejected a claimant's appeal against the Insurance Officer's decision disallowing benefit, though, as the Commissioner pointed out when the case came before him (on further appeal by the injured workman), the facts were practically on all fours with the House of Lords, Workmen's Compensation, decision in *Young* v. *Fife Coal Co. Ltd.*, 33 B.W.C.C. 107., where the workman had won. The fact is that "accident" tends to be construed as narrowly against the claimant as it might have been in 1898, when Workmen's Compensation was first introduced. Naturally, this is not the fault of the lay members. The truth is that they usually have no knowledge at all about Workmen's Compensation, or its developments, but it is absurd to have an appeal tribunal where such burdens are laid upon persons who are without knowledge of the subject.

36. There is also (not unnaturally) a persistent idea that the victim of industrial accident should lose his claim, if the accident was in some way his own fault. This kind of thing makes it very difficult to preserve the credit of the tribunal while the case is being argued, because observations tend to be made which reveal a remarkable ignorance. It is also very difficult to deal with a case which touches on the differences between injury benefit and disablement benefit, a subtle subject on which I think few lay members would claim much knowledge. I have even met lay members who did not know that the two types of benefit exist. There may perhaps be more excuse for the wide-spread lack of knowledge of what is meant by "Special Hardship Allowance", and of the complex rules governing it. On the other hand, what is to be thought of an appeal court, two of whose members know nothing about the relevant law?

37. I would not like it to be considered that these conditions are peculiar to Liverpool, because I am certain that they exist all over the country. This is shown by the fact that one has only to examine some of the Commissioner's decisions, on the Industrial Injuries Acts, to see clearly that the subjects dealt with, and the considerations applicable, are beyond the scope of a tribunal consisting partly of lay members.

38. Things are worse in the field of National Insurance, because in that class of appeal the claimant is absolutely prohibited from having a lawyer to help both him and the tribunal, and the cases are tried in a room which is closed to the public and the press. To get an idea of the complexity of the law, examine the cases given in the Commissioner's Index under the head "*Age, Marriage, and Death*", or, indeed, under any other head in the Index. Again, how many people really know the various kinds of Maternity Benefit, or of Widow's Benefit,

and the conditions under which those benefits are payable? What are the rules about Seasonal Workers and Unemployment Benefit, and what are the Commissioner's decisions on the subject? What is meant by a Subsidiary Occupation, and what is its relevance, and to what? What is the difference between a Review and a Decision, and does it make any difference which it is; and, if so, what and how? Why is it important to know whether a claim for benefit is a first claim? In all these, and innumerable other questions, it is safe to assert that the average lay member has no knowledge at all.

39. It is possible also, that there are few chairmen who could give decisions without a good deal of careful looking-up and preliminary consideration, and, if this is so, it seems right and proper, considering the difficulty of the subjects involved. What happens in my case is that the Clerk to the Tribunal (a civil servant with the Ministry) sends me at my request the case papers a few days before the hearing, and I must then spend a good deal of time in a preliminary examination of the legal questions raised by the Insurance Officer in his written submissions. I am under the impression that many well-founded appeals would fail, were it not for this pre-tribunal work.

40. Summing all this up, the Acts and the Regulations saddle us with an appeal system which burdens entirely untrained unqualified lay people with responsibilities which are entirely different from those undertaken by Juries.

41. In the realm of Industrial Injuries, they were formerly carried by County Court Judges and higher Courts, and, in the realm of National Insurance, they hardly existed before 1948. What should be plain is that it is unfounded to assert that one of the advantages of these tribunals is that they are specialised appeal bodies constituted to deal with specialised problems.

42. The injustice (both real and apparent) unwittingly worked by the system has already raised many protests. An example of this is the leader entitled "Sharp Practice", in the Manchester Guardian of 6th November, 1954, and the subsequent correspondence. The subject was again referred to in an article in the Guardian on 30th September, 1955, entitled "Claims after Three Days", followed by more correspondence. The situation is saved by the corrective action of the appeals from the tribunals to the Commissioners, where the claimants have a right to instruct a lawyer. The Commissioners are highly-qualified lawyers, appointed by the Lord Chancellor.

Tribunal Procedure

43. There is no doubt that the disregard of legal rules of evidence, and the lack of cross-examination, work to the detriment of claimants, though it seems that the idea was that the relaxation would help claimants. (Cases touching on evidence are *C.I.* 97/49 (*K.L.*), *R* (*G*) 1/51 and *R* (*S*) 7/53.) The trouble arises especially in cases where Ministry Officials or doctors make reports adverse to claimants, and the reports are put into the case papers as evidence, but the witnesses are not present to be cross-examined. It is not easy in such circumstances to know how to advise a lay tribunal to deal with such evidence (i.e. whether the evidence has to be accepted or rejected as a whole) though some assistance on this subject can be derived from *R* (*S*) 1/53.

44. Another point is that regulation 26 (2) of the *Determination of Claims and Questions Regulations* operates (or is thought to operate) to prevent free discussions of a case during the hearing. It is hard to know, during a case, what observations, from the tribunal to the claimant or to the Insurance Officer, may be considered to infringe the regulation. It is a restriction which may (on some views) go beyond anything known in an ordinary law court. Certainly it would not be tolerated by the Judges or Magistrates. The reason for it may have been that it was felt that the tribunals would be so inexperienced in judicial work that they could not be relied on not to say foolish or ill-advised things, but this does not seem an adequate justification. At any rate, the existence of this rule is awkward for a tribunal which is dealing with an unrepresented claimant, who is, of course, apt to present his case in the worst possible way, and whom in the interests of justice the tribunal wants to help. A decision on the subject is *C.S.I.* 37/50 (*K.L.*).

45. The fact that the chairman has to write down all the evidence, and to write out the decision, and the reasons for it (*see R (I) 81/51*) tends to increase the difficulty of the work, especially because cases have to be taken at great speed, and (in the absence of legal representation) have to be conducted at all stages by the chairman.

46. This leads to the important point that the lists are overloaded. In Liverpool, the tribunals usually sit at 2 p.m. and there is a system (excellent in principle) under which the claimants are notified in advance of the approximate times when they should attend, so that they do not all come in a bunch. It is expected that the sitting will last about three hours (though the lay members are sometimes apt to get impatient if it does) and the clerk makes an attempt to forecast the length of the cases. Often they are spaced so that claimants come every half hour or so. But those intervals are far too short to deal with eight or nine cases, especially if one or two of them are Industrial Injury Appeals, of the type which used to occupy County Court Judges (assisted by Counsel) about half a day.

47. Overloading does not matter much, if all that is going to happen is that the Insurance Officer's contentions about the law are tamely accepted, with the result that the appeals fail. But it is serious if each case is to have proper attention, and if each case is to be properly explained by the chairman to the lay members.

48. In practice, the fact that the lay members can override the chairman's view does not cause difficulty, because the lay members are diffident about expressing views on questions so obviously beyond their knowledge.

49. What is more serious is the delay caused when applications for leave to appeal to the Commissioners (from a decision of some other tribunal) are unexpectedly added to an already overburdened list. Whether leave should be granted is really decided by the chairman, because he alone is competent to form an opinion, but the regulations provide that it is a decision of the whole tribunal (*see R (I) 4/56*). This involves studying the papers, and the evidence taken on the hearing, and the decision, and trying to explain the issues. Another case on this subject is *R (I) 20/55*.

50. I think it would be much better and quicker if this work were left to the chairman alone.

51. The tribunal work is of course made far more arduous and difficult because the claimant is prevented from having a lawyer. Apparently this was done on the entirely unfounded idea that nothing legal or technical is involved. About this notion no more need here be said, except that it is pitiable to see claimants struggling with such complexities as what constitutes "good cause" for failure to make a claim in the prescribed time, a subject occupying no less than thirteen pages in the Commissioner's Index. Very few claimants have heard of the Commissioner, still less of the Index.

52. It is, of course, well known that claimants are allowed to be represented by anyone, provided that the representative is legally unqualified, and has no professional responsibilities to the tribunal or to his client, but this is as grim a joke as a regulation laying down that anyone can perform a piece of surgery or dentistry, so long as he has no qualifications.

53. The obvious result is that the chairman has to depart from his proper duties, and try to find out what is the claimant's case, and put it for him in the best way for the claimant, but this is difficult, and does not help towards a satisfactory conduct of an appeal. The situation would be easier if the other tribunal members had more grasp of what is involved.

54. I am very much in favour of a friendly atmosphere being created, and my opinion is that the atmosphere could be improved if claimants could bring with them a lawyer in whom they have confidence, and who is familiar with the work of the tribunal. In practice, one has known the fear of many people to attend any meeting where they are likely to be called upon to speak. These people are often without friends who can give them confidence, and the remedy would be to encourage them to consult an institution interested in social affairs, where they could be introduced in the proper manner to a lawyer.

55. In dealings with the Ministry of Pensions and National Insurance and the Ministry of Labour, I have found their officials most helpful to all applicants coming to the offices for the purpose of the hearing of the tribunal, but I cannot overlook that the applicant is asked to attend the tribunal at the offices of the Ministry, and that there is nothing to emphasise that the tribunal is independent of the Ministry. The fact that the Ministry official leaves the room, when the tribunal is coming to a decision, is not sufficient to take away the feeling created by the atmosphere when the applicant is alone, or when everybody with him or her is in some way or other connected with the Ministry. The presence of a legal adviser is the complete answer.

56. I have always thought that a great defect is that the tribunals sit in Ministry premises. Undoubtedly this leads claimants to think that their appeals are being tried by Ministry officials. It is common for claimants to show by their remarks that they confuse the tribunal with the Ministry. In this connection, it also has to be recalled that the tribunal clerk is a civil servant in the Ministry, and that the case dossier is prepared by the Ministry, without being submitted to the claimant for his comments and approval. What is the authority for this method of preparing the papers has never been explained to me, but *R/S/13/52* is a decision with some possible bearing on the subject.

57. Then there is the further (serious) point that National Insurance cases are not open to the public or press. Publicity would probably be extremely helpful for claimants. That this is so appears to be recognised in Industrial Injury cases, which *are* held in open court.

58. Finally, the complexities of the tribunal procedure can be gathered by examination of the heading "*Determination of Claims and Questions*", in the Commissioner's Index, where it occupies eleven pages.

Conclusions

59. In my opinion, the best thing would be to entrust the tribunal work to the County Court Judges and Registrars. If, however, they (not unreasonably) decline such a mass of additional cases, which would also involve mastering a mass of new, unfamiliar law, the right course in the public interest is to improve the quality of the tribunal members. I would only be in favour of having lay members, if (though unpaid) they were willing to learn at least the rudiments of National Insurance and Industrial Injuries Law, before undertaking the work. If this is considered too big a proposition, I would submit that the lay members should be dispensed with entirely.

60. It is, I think, wrong that the Ministry should appoint (and dismiss, or not re-appoint) the tribunal members. I believe that it is very rare for a chairman to be dismissed (or not re-appointed) except for age or infirmity, but the existence of that reserve power might be a serious matter for a chairman who depended to any extent financially on the work. I myself do not think there could possibly be any grounds for apprehension, but, in principle, it is wrong for one of the parties to an appeal to appoint the court members.

61. In all cases, the public ought to be allowed to instruct lawyers to appear, without restriction, and without the leave of anyone. Such a right is in the public interest, and also in the interest of the proper working of the tribunal. The Legal Aid Scheme might well be extended to cover tribunal work.

62. Cases should not be tried on Ministry premises.

63. The proceedings should be open to public and press.

64. The mode of preparing the case dossier should be examined and improved.

65. Applications for leave to appeal to the Commissioner should be dealt with by the Chairman alone.

66. The power for an Insurance Officer to refer a case to the tribunal for decision (instead of deciding it himself) should be abolished.

67. Contribution questions should go direct to the Minister.

68. The strict view taken against the claimant in late claim cases should be relaxed, and the position should be more akin to that obtaining with an Insurance Company. I think that consideration might be given to a requirement that the Ministry should have to show that it has in some way been prejudiced by a late claim.

69. The tribunal lists should not be overloaded.

70. Regulation 26 (2) of the *Determination of Claims etc., Regulations* should be cancelled, or at any rate, modified so as to make it clear that the tribunal can freely discuss the merits of a case, and the evidence, during the hearing, in an open way.

71. The chairman's work should not be so heavy. My opinion is, however, that his work would at once become easier if the public were allowed to instruct lawyers, with the result that the chairman no longer had to go out of his way to conduct the claimant's case.

Mr. M. Schindler

The Committee may be interested in brief information about how continental countries handle certain problems of administrative law. As recent publications are available about French and Italian law, and as I was trained in German law I shall take this law as the basis for the remarks which I beg to submit. I shall confine myself to a few problems of which I became aware when attending public hearings of the Committee.

Judicial review and policy

(*a*) German law does not recognise absolute discretion; the administrative authorities, therefore, cannot escape judicial control by claiming the execution of policy. Policy is a motivating element when discretion is exercised.

(*b*) It is policy whether and when to make use of statutory powers unless in certain cases, performance of an administrative act can be enforced by the order of an administrative court. How the discretion is exercised in execution of policy is subject to judicial control.

(*c*) Judicial review does not include the suitableness of an administrative decision. However, German (like French) concepts of excess and abuse of discretion enlarge the scope of judicial review. For instance: a German court would have decided in favour of the plaintiff in *Robins & Son, Ltd. v. Minister of Health* (1939) 1 K.B. 520 as plaintiff offered an equally suitable solution more agreeable to him. The refusal to adopt this solution would have amounted to an abuse of discretion in German law.

(*d*) Art. 19 (4) of the Constitution of the German Federal Republic provides for an appeal against the infringement of a person's right by a public authority. This appeal to a court cannot be excluded by statute, i.e. no statute can prescribe the finality of administrative decisions.

(*e*) There is one problem in respect of which the opinions of German courts and administrative authorities differ. The courts rule that "broad statutory terms" or "general statutory expressions" like "unfit for human habitation, park, danger, public interest" are to be applied to individual cases not by the exercise of discretion but by legal interpretation. The public authorities claim that it is in their discretion how to apply these terms. Even if the administrative authorities were right their discretion would still be subject to judicial control within the limits stated above.

Law and fact

Every administrative decision can be challenged in a district administrative court. An appeal against judgments of this court is to the Higher Administrative Court of the Land concerned. In certain cases there is a further appeal to the Federal Administrative Court. The review by the courts of the first

two instances is in respect of legal and factual errors. This has the advantage of

(*a*) ascertaining the facts in a more certain and satisfactory way than it can be done by administrative authorities which frequently work under pressure of time and without the assistance of lawyers presenting the affected person's case,

(*b*) avoiding the law and/or fact-problem which is harassing the courts and parties if judicial review is restricted to errors in law.

Administrative Courts

There are various categories of administrative courts but all are independent courts with the same status as ordinary courts, namely Administrative Courts (dealing with the so called general administrative law), Finance Courts, Social Courts and Labour Courts. All these courts are reviewing and not making administrative decisions. (Confirmation is actually a part of the making of a decision.)

There is another way of challenging an administrative decision namely by "complaint" to a superior administrative authority. The Minister acts in the first instance in very few cases only but has frequently to decide on complaints about decisions of regional and local authorities. He then acts as chief of the departmental hierarchy but is not considered an administrative court or tribunal as he is not independent and possibly biassed in favour of his policy. This complaint does not exclude judicial review. On the contrary, a complaint to the superior authority or a protest to the authority concerned have to precede a challenge in court. The advantage of this procedure is that the administrative authority has a possibility of self-control, that litigation may be avoided and that the plaintiff may have the chance of achieving a change of discretion.

Judicial, quasi-judicial, administrative

This division is unknown to German law. Every application of public law to a particular case by a public authority is an "administrative act". It has been increasingly recognised that such decision should be made in a "judicial spirit" as it interferes with the rights of individuals. The division has never developed in civil law-countries, probably for the following reasons:

(*a*) a person appointed a judge only can and has to act judicially (except from a psychological point of view),

(*b*) every administrative act can be challenged in court independent of the procedure by which it was arrived at. As civil law does not know prerogative acts there was no need for ascertaining whether the conditions for obtaining a prerogative writ were fulfilled nor, therefore, for discriminating between various kinds of administrative actions.

Mr. E. Toeman

1. In my view administrative tribunals are justified only where the jurisdiction of the tribunal is in matters of a highly technical nature or where the tribunal is a disciplinary one.

2. The argument that most tribunals are a means of providing speedy and cheap justice has been invalidated by the introduction of legal aid to the County Court and the High Court, the former, of course, is to be introduced shortly. The County Court provides cheap and speedy justice. In the past it dealt with Workmen's Compensation cases very effectively, though similar matters are now determined by the National Insurance Tribunals. It also deals satisfactorily with a multitude of Rent Act problems, though some of these matters have been allocated to the Rent Tribunals. All that is needed is the provision of more County Court Judges.

3. The above argument is also invalidated by the fact that the costs of litigating in Rent Tribunals and other bodies is quite as great as litigation in the County Courts, and no costs can be recovered.

4. The exclusion of the right of appeal from many tribunals is a serious injustice, which can seriously prejudice the rights of those whom the tribunals were created to protect e.g. tenants in Rent tribunals cases, who through their associations could easily contest appeals.

5. It is highly undesirable for members of the Executive, ministers and others, to have quasi-judicial powers viz. to confirm or rescind orders after public enquiries, or to be in the position where they can appoint members of tribunals. This can easily lead to abuse (*a*) because decisions may tend to be coloured by political views (*b*) because a tribunal whose members are appointed by one of the ministries, and not by the Lord Chancellor's recommendation acted on by the Crown, may be subservient to the Minister and thus its members' judgments may be influenced politically (*c*) directives issued by the Minister to the tribunals may have a political colouring. The only safeguard of an independent judiciary, in all branches, is to ensure that judges are appointed on the recommendation of the Lord Chancellor who, by virtue of his office as a judge, is bound to be completely impartial, and for judges to be virtually irremovable, subject to removal by resolution of both Houses of Parliament. The mixing of governmental powers can lead only to the destruction of an independent judiciary, because when Ministers committed to particular policy are allowed to appoint judicial officers in tribunals which are instruments of policy and to control their proceedings in those tribunals, there will be a temptation to regard the tribunals as judicial instruments of an administrative policy. The Lord Chancellor is not committed to any judicial programme and is entirely unfettered in his choice of judges, and must act without any regard for political considerations.

6. The principles of natural justice are being infringed by tribunals in their procedure. The rules laid down in *Local Government Board* v. *Arlidge* 1915 A.C. are being undermined by regulations governing procedure and practice in the tribunals, e.g.:—

(i) Despite the rule audiatur et altera pars, it was held in *R.* v. *Brighton Rent Tribunal* 1950 1 AER 946 that a Rent Tribunal could act of its own knowledge, and was justified in not allowing the cross examination of a party on written evidence supplied by him, which the other party could not know. It was impossible for that party to know the case against him or to meet that case or properly present his own case.

(ii) Tribunals are often not required to give the ratio decidendi of their decisions.

(iii) Where the minister acts in a quasi-judicial capacity, he often has an interest, be it only political, in the decisions, as for instance in the case of planning decisions, which must often be determined in the light of political policy. It is true that tribunals are not bound to follow the normal procedure of the courts, but this is a far cry from acting on the tribunal's own knowledge without giving a party a proper chance to present his case or answer that of his adversary.

7. If tribunals are to be retained, I respectfully suggest that a division of the High Court should be established solely to deal with appeals from administrative tribunals and to hear certiorari and mandamus applications; that there be a universal right of appeal from tribunals on fact and law to this division; that judicial powers either initially or in respect of appeals be taken away from ministers of the Crown and civil servants.

8. The regulations which preclude legal representation in some tribunals should be abolished.

Professor E. C. S. Wade

Note: Professor Wade, who was invited to submit evidence, stated he was unable to submit a memorandum. He, however, expressed two general comments in the letter printed below.

The Brook,
Sawston,
Cambs.

10th May, 1956.

Dear Sir,

Thank you for your letter of April 30th. I have now had an opportunity of reading the Minutes of Evidence given on the seventh and eighth days. Perhaps I may be allowed to say that I find myself in full agreement with Part I of the Personal Memorandum submitted hy Sir George Coldstream. I have already told you that my experience is not wide enough to justify my offering to the Committee evidence on particular tribunals or forms of public enquiry. I should, however, like to add two comments on the general issue of administrative tribunals, since I do not think either of my comments have been made by any of the witnesses whose evidence has been published so far.

1. Since most of the disputes which have resulted in litigation in the High Court relate to the use of land in a particular locality, I should like to suggest that there are good reasons for the exercise of appellate jurisdiction locally rather than in London, as to some extent is already provided by the Agricultural Land Tribunals. A tribunal on the lines of the Appeals Committees of County Quarter Sessions would revive the former administrative functions of Quarter Sessions where there are justifiable issues for decision which cannot be left to the local administrative authorities. I have in mind that such a jurisdiction would be preferable to the relatively expensive process of taking a case to the High Court by way of case stated.

In this connection perhaps I may be allowed to say that I am not in favour of the establishment of an Administrative Division of the High Court, or indeed of any extension of High Court jurisdiction in the direction of substituting the decision of the court for that of an administrative agency.

2. So far as the existing jurisdiction of the High Court is concerned, matters have become so obscure through the ever-increasing volume of decisions on the scope of the judicial orders of certiorari, prohibition and mandamus that it is tempting to suggest to the legal members of the Committee that consideration should be given to the replacement of these ancient remedies by an action for a declaration, to which, in appropriate cases, could he added a claim for an injunction; in practice, however, since administrative agencies normally act on the ruling of the courts no injunction would be required.

Yours faithfully,
E. C. S. WADE.

The Secretary,
The Committee on
Administrative Tribunals
and Enquiries.

Mr. D. Willoughby

PROCEDURE AT ADMINISTRATIVE TRIBUNALS AND ENQUIRIES

I would like to submit the following points which are, in effect, what I consider to be defects arising from excessive informality in the conduct of the proceedings before such Tribunals.

My comments are based on proceedings before tribunals dealing with local government matters, particularly Town Planning appeals and enquiries, and are purely personal—they are not made on my Council's behalf.(1)

1. The taking of evidence

In the light of my experience of these tribunals I consider it necessary that all witnesses should give their evidence seated at a table placed apart, in a similar position to a witness box or stand in a court of law. This is sometimes the practice, but there is an increasing tendency in my experience of evidence to be given by witnesses sitting next to their advocate and other witnesses for their side. I feel that this is undesirable because of the opportunities it offers for covert prompting and also because the physical presence of persons immediately beside the witness can serve to provide him with a screen behind which he can avoid too close a scrutiny of his demeanour, and because this also provides him with what might be termed "psychological" support in giving an answer more boldly (and less truthfully) than he would if isolated. The practice of the courts is a very wise one and should I think be followed, particularly since there is nothing to be lost by its observance.

As instances I would mention a recent hearing before a Licensing Authority for Public Service Vehicles where a principal witness, seated in very close proximity to his employers and others on his side, continually looked to them for some indication of assent or dissent and when an assenting nod was forthcoming became much more emphatic in his evidence.

At a town planning enquiry an Inspector permitted minor objectors to give evidence from the public benches, and parties witnesses also gave evidence seated with their colleagues. As a result pert and unreliable answers were given on cross-examination, which was also difficult since advocates had to turn and face the public benches to ask questions.

The prompting of witnesses by their advocates is not infrequent where the advocate is unqualified (e.g. an estate agent or club secretary) sometimes being done in ignorance of proper practice in such matters.

2. Advocate Witnesses

I would draw attention to the difficulties that arise when a party is represented by an unqualified advocate, quite ignorant of the rules of evidence, who also doubles as a witness. On the hearing of Town Planning appeals in particular one does not wish to be unduly meticulous over such rules but when it is necessary to do so it can be difficult to make such an advocate appreciate the distinction between evidence and comment on evidence, or to grasp elementary rules on the admissibility of evidence. This is made worse by the reluctance of the majority of Ministry Inspectors to give any decisions on these points, if taken. If an objection is made the Inspector usually states that this will be noted, so that whether or not the evidence is received remains in doubt.

For these reasons I would suggest that an advocate should not be permitted to give evidence, as would be the case in a court of law, except an appellant in person, and I think it very desirable that Inspectors should be empowered, if not required, to give immediate rulings on procedural matters such as the admissibility of evidence.

It is my experience that the confusion between the capacities of witness and advocate can be as much to the detriment of the individual appellant as to the

(1) Mr. Willoughby is Clerk of the Littlehampton Urban District Council.

local authority. I would mention that at a recent Town Planning inquiry, a case was conducted by an estate agent who gave no evidence himself and called only his client as a witness. It was apparent that he could have given evidence that would have been of value to his client whilst such evidence as his client gave, since the client lacked any technical knowledge, was of very little value, further the client under cross-examination gave damaging answers which could have been corrected by his expert witness had one been called.

3. The acceptance of objections from other persons interested

My comment here relates to Town Planning Appeals but the same problem may arise with other Tribunals.

When the Minister decides to hold a local hearing he usually instructs the local planning authority to give notice to adjacent owners and occupiers and to say that they may make representations to him if they wish. I consider that the right to be heard as an objector should rest on a clearly defined right and not be dependent in the first instance on the Minister or the planning authority.

To cite an instance, on an appeal as to the residential development of 120 acres of farm land, notices, issued on the instructions of the Minister, to *adjacent* owners and occupiers will admit as an objector the weekly tenant of a small bungalow whilst the owner of substantial blocks of property or of nearby (but not adjacent) farms is excluded. In fairness to the Minister and the planning authority it must be said that they would probably admit such an owner if he sought a hearing but the owner may not know that the appeal is pending. The alternative of public notice by advertisement, a " free-for-all ", which is sometimes employed, is not very satisfactory since it tends to attract irresponsible and eccentric objectors.

Bearing in mind that where the planning authority grant consent in the first instance (so that no question of an appeal arises) adjoining property owners are not consulted save exceptionally, there is something to be said for not inviting outside objections on the hearing of an appeal.

In conclusion I would say I feel that most of the foregoing matters of which I complain could easily be remedied by the adoption of a simple code of rules to be observed in the conduct of proceedings before these Tribunals based e.g. on police court or county court practice. These might well be supplemented by some form of instruction to the convenor of the hearing (usually the Minister or other government department) as to the arrangement or layout of the room in which the hearing is to be conducted so that suitable accommodation is provided for the Inspector, advocates and witnesses. So far as I am aware, little if any consideration is ever given to this latter point and in the case of town planning enquiries, the Inspector simply arrives at the time and place appointed and has to accept such accommodation as the planning authority or the owners of the building think fit to provide.

Association of Land and Property Owners

The Association of Land and Property Owners wish to draw attention to two spheres of administrative rule where the procedure affects the rights of property owners in such an arbitrary manner as to call either for early amendment or to be made subject to some form of appeal. They relate to (1) Town Planning and (2) Rent Tribunals.

Town Planning

(a) *Development Plans.* Many instances can be given where certain proposals made by a planning authority in a development plan have been regarded as reasonable and have therefore not been objected to at the inquiry on the plan held by the Ministry of Housing Inspector. When, however, the plan has gone to the Minister, he has made alterations to which objections could have been taken had they been advanced by the local authority. But the Minister's decision is final for the time being and there is no appeal.

(b) *Compulsory Purchase Orders.* Again, cases can be cited where the Minister has decided compulsory purchase orders on grounds different from those presented or considered at the public inquiry held on the subject. No opportunity has been given to rebut any arguments and there is no appeal against the decision.

(c) *Planning Refusals.* A decision by a local authority may be amended on appeal by the Minister for reasons other than those considered at the public inquiry. There is no appeal from the decision.

(d) *Inquiry Procedure.* The planning authority that has refused permission often fails to open the case at the public inquiry and discharge the onus of proof. It is suggested that the planning authority ought to provide maps and deploy its case so that the supplicant should be able to appreciate the case against his application. It is for consideration also whether public servants should be made to appear and be subject to cross examination. There are complaints about delays by the Minister in giving his decision.

Rent Tribunals

The effects of rulings given by Rent tribunals would perhaps not be so serious if they were dealing only with questions of fact or the mere reasonableness of a claim in respect of an accepted item. Enough cases have now been heard by tribunals to show that a series of complex legal points may be involved on which there is no settled authoritative opinion despite dozens of appearances. Indeed, except in the case of one tribunal, there has not even been any statement of the grounds on which decisions have been based. Here are three obvious examples:

(a) *Services.* Under section 40 of the Housing Repairs and Rents Act 1954 landlords are entitled to an increase in the cost of services between 1954 and 1939. Whilst both contractual and non-contractual services can be taken into account there is no definition of services under the Act. On the other hand, services are defined in the 1946 (Furnished Houses) Act and there have been rulings in the Courts as to the meaning of services under the Rating Acts. Particular trouble arises in relation to installations such as lifts and boilers. The determinations so far given by Rent tribunals do not suggest that they have formed any uniform view as to what items were permissible under the 1954 Act.

(b) "*Stopper*". Under section 24 of the Act the repairs increase recoverable cannot bring the rent beyond a figure of twice the gross value of the dwelling. This limitation has become known as the "stopper clause". The rent for the purpose is the net rent less rates, value of furniture and cost of services. Again services are not defined but it would appear that under the term contractual services only are included. The wording under this section is different from the wording under section 40. This again is a problem that has not been fully resolved.

(c) "*Internal Decorative Repairs*". Under section 30 of the Act where neither the landlord nor the tenant is under an express liability to carry out internal decorative repairs, the landlord may elect not to be responsible for internal decorative repairs and in this event can only claim two-thirds of the increase. Although the prescribed forms indicate that the "stopper" referred to above should be applied before the two-thirds calculation is made it has been strongly contended that the "stopper" should be applied afterwards.

In view of the lack of authoritative decisions on these legal matters the determinations made by Rent tribunals reveal serious anomalies. Not only have different tribunals apparently given different decisions on different bases but the same tribunal seems to have given different decisions at different times. Save in one instance, no reasons for decisions have been given. There is no appeal against decisions of Rent tribunals. Justice demands that they should at least give reasons for a decision so that points of law could be referred to the Courts.

British Dental Association

The British Dental Association is a national organisation which covers the United Kingdom. It has a membership of 11,000 out of about 12,500 practising dentists, and the majority of its members are participating in the National Health Service as general practitioners.

The Committee will be aware that Regulations made under the National Health Service Acts set up a machinery for the investigation of complaints made against general practitioners in the National Health Service. The machinery is broadly the same for both dental and medical practitioners and for chemists. Complaints against practitioners are dealt with by Committees of the local Executive Councils, known as Service Committees. A Service Committee hold an enquiry into any complaint made and report their findings and recommendations to their parent Executive Council. If the Executive Council decide that there has been a breach of the practitioner's terms of service they may impose certain penalties. If they decide that a fine is appropriate they may recommend to the Ministry of Health (or the Secretary of State for Scotland) that a fine be imposed. Both the person making the complaint and the respondent practitioner have the right to appeal to the Minister against any decision of the Executive Council, and the practitioner may make separate representations to the Minister against a proposal to impose a fine. The decision of the Minister on any appeal or on any representations by a practitioner is final.

The British Dental Association is generally content with the Service Committee machinery and we do not wish to propose radical alterations to it. There are, however, two matters upon which we feel great concern and which we have decided ought to be brought to the attention of this Committee. These matters are:—

(1) The possibility that Members of Parliament may influence the Minister in the discharge of his judicial and quasi-judicial functions under the National Health Service disciplinary Regulations.

(2) The occasional departure of the permanent officials at the Ministries from judicial impartiality for the sake of administrative convenience.

1. **The Influence of Members of Parliament.** We admit at once that we have no overwhelming evidence that Members of Parliiament have, in fact, influenced the Minister in the discharge of his functions under the disciplinary Regulations. From the nature of things the Association is unlikely to acquire conclusive evidence in a matter which is essentially one of delicacy and confidence. We have, however, two cases where there is circumstantial evidence which in our view points strongly to the conclusion that the Minister was so influenced.

We make no apology for raising this important issue on the strength of these two cases. It seems to us that the principle at stake here, and indeed wherever a Minister has to exercise judicial or quasi-judicial functions, namely that he should not be influenced by political considerations, is so vital that some pronouncement on it by the Committee would be most valuable.

The following are summaries of the two cases which we produce as evidence:—

(a) *The case of Mr. B. of Manchester.* This case occurred in 1952 and 1953. In order to make the issue clear it is necessary to outline that part of the disciplinary Regulations which affects complaints made against a practitioner outside the ordinary time limits laid down by the Regulations.

The normal outside time limit within which a complainant must lodge his complaint is six months from the completion of treatment. If a complaint is received by the Executive Council after the six months, the Service Committee may investigate it

(i) if they are satisfied that the failure to complain earlier was "occasioned by illness or other reasonable cause", *and*

(ii) if either the practitioner concerned gives his consent or the Minister gives his consent.

The decision whether to ask for the consent of the Minister in this way is wholly within the discretion of the Service Committee and if they decide not to apply to the Minister the complainant has no right of appeal against that decision.

Mr. B. provided dentures for a patient. The patient later complained to the Dental Estimates Board about the fit of the dentures. The Dental Estimates Board passed the complaint on to the Executive Council, who noted that it had been received by the Board more than six months after the completion of treatment. The Council accordingly informed the complainant that as the complaint was not received within the period prescribed by the Regulations, the Executive Council were unable to take any action in the matter.

The patient then complained to her Member for Parliament who got into touch with the Executive Council. The Executive Council told the Member of Parliament that, while the Service Committee procedure did allow for the Service Committee to apply to the Minister of Health for consent to hear a complaint made out of time, the Dental Service Committee in this particular case, in the absence of any valid reason for the delay in submitting the complaint, had not considered the case to be one in which the Minister's consent should be sought.

Some eight weeks later a telephone call was made by an official at the Ministry of Health to the Clerk of the Executive Council. This was followed by a letter from the Ministry to the Executive Council in the following terms:

> "For record purposes perhaps I should confirm the arrangements we made by telephone in the case of Mrs. P. of Manchester.
>
> I understand that Mrs. P. complained to the Council about her dentures but that as her complaint was not made within the normal time limit and as she offered no valid reason for the delay, she was told the complaint could not be investigated. According to information given to the Minister, Mrs. P. obtained the dentures in November 1951. She went back to her dentist in January 1952, to complain that they did not fit and he told her to come back in November. If this is so, Mrs. P. may simply have been obeying her dentist's instructions and thereby missed her chance to complain within the normal time.
>
> You agreed to ask the Dental Service Committee to consider again whether the grounds for delay in complaining were reasonable and to let me know the result."

It should be noted here that documents show that the "information given to the Minister", referred to in the second paragraph of this letter, was very similar to information which the patient gave in her original letter of complaint and which was before the Service Committee when they made their first decision not to apply for permission to hear the complaint.

In a postscript to a further letter, two days later, from the Ministry to the Executive Council, the writer said "I telephoned you about possibly having to apply for consent to investigate."

The Dental Service Committee duly met in accordance with the Ministry's request and decided to seek the consent of the Minister to the investigation of the complaint. The Minister, perhaps not surprisingly, gave his consent. The case was then investigated fully by the Service Committee and the dentist was exonerated from all blame.

From these facts it seems to us very probable that the telephone call from the Ministry of Health to the Executive Council and the subsequent letters quoted above were the result of an approach by the patient's Member of Parliament to the Minister of Health.

If our assumption is correct we submit that the Ministry acted in a highly improper manner.

In our contention the decision of the Minister whether to permit the hearing of a late complaint is quasi-judicial in nature: for that decision determines whether a practitioner shall be put in peril of penalties to property and reputation.

Yet in this case the Ministry asked the Executive Council to re-open a matter which that Council had finally disposed of in their entire discretion, and they invited the Executive Council to submit an application for permission to hear the out-of-time complaint although the Minister was the very person who would have to take a quasi-judicial decision upon that application when it was received at the Ministry.

If, moreover, the finding of the Service Committee after the hearing of the complaint had gone against the practitioner concerned and he had decided to appeal, that appeal would have been determined by the Minister, that is by the same authority as had asked in the first place for the case against the practitioner to be re-opened.

(b) *The case of Mr. R. of Fifeshire.* For an understanding of the point we make in this case it is necessary to explain shortly that part of the Regulations which deals with the right of appeal against the decision of an Executive Council once a complaint has been investigated by their Service Committee.

When an Executive Council reach a decision in a case of this kind they give notice to the complainant and to the practitioner. The Regulations say that any party aggrieved by the decision of the Executive Council may appeal to the Minister within one month from the date on which notice of the decision was received. It is further provided that the Minister may, on the application of any person desiring to appeal, extend the time for giving notice of appeal and that he may do so although the application is not made until after the expiration of one month from the date of the Council's decision being notified to that person. Application for an extension of time in this way must be made in writing to the Minister and must state the grounds for the application. It will, therefore, be seen that before a late appeal can be entertained a necessary preliminary is for the party to apply for an extension of time and to state his grounds for so applying.

In 1953 a patient complained to the Executive Council about the fit of dentures supplied by Mr. R. a few weeks earlier. A hearing took place before the Dental Service Committee of the Executive Council and the Committee recommended that the complaint be dismissed. This finding was confirmed by the Executive Council on 2nd December, 1953, and the patient was notified of the finding immediately thereafter. The letter from the Executive Council to the patient contained the following passage:—

> "Any person aggrieved by the Council's decision has the right of appealing to the Secretary of State for Scotland, St. Andrew's House, Edinburgh, 1. If an appeal is intended the appellant must send to the Secretary of State, within one month after receiving notice of the Council's decision, a notice that an appeal will be made. . . . The month mentioned above for giving notice of appeal may be extended by the Secretary of State if the appellant gives reasons for the extension."

No appeal was received by the Secretary of State within the following month, and his department accordingly notified the Executive Council that the Council's decision became operative. The patient, however, decided to raise the matter with her Member of Parliament and wrote to him on 15th December, 1953, asking him to take up her case. Her Member of Parliament happened to be ill and it was not until two months later that he got into touch with the Secretary of State.

On 4th March, 1954, the patient submitted a formal appeal to the Secretary of State against the Executive Council's decision, sent to her on 2nd December, 1953. The appeal was eventually heard and the Secretary of State determined it in favour of the patient. He decided also that a sum of money should be recovered from the practitioner concerned.

It again seems clear from these facts that following upon contact between the Minister and a Member of Parliament the patient was encouraged to make a formal appeal long after the original time limit for appeal had gone by.

It is also clear that the intervention of a Member of Parliament had been sufficient to convince the Minister that an appeal ought to be lodged and heard. For the Minister altogether neglected to secure from the patient any application for extension of time to appeal or any statement of the grounds for that application.

In fact, because of the Minister's failure to comply with the Regulations in this last respect, the British Dental Association was able to have the decision of the Secretary of State quashed by the Court of Session.

Our chief complaint against the Secretary of State in this case is, however, less that he failed to secure compliance with the letter of the Regulations than that, by his apparent eagerness to receive an appeal long after the ordinary time limit had elapsed, he hopelessly unfitted himself to give an impartial judicial decision on the appeal when it came before him. It is hardly surprising that the practitioner in this case was left with the impression that the patient and the Minister were in league to secure his " conviction ".

General Comment on these two Cases

We do not for one moment dispute the right of a Member of Parliament to pass on to the appropriate Minister any complaint which he receives from a constituent. We do, however, maintain that a Minister who is entrusted with a judicial or quasi-judicial function should be most circumspect in his response to an approach by a Member of Parliament in any case where he may have to exercise that function. If the professions and the public are to be satisfied that they are getting justice from the Ministers concerned in the disciplinary machinery of the Health Service, the Ministers' conduct must be that of a judge and they must repel all temptation to allow political or other considerations to influence them in the discharge of their judicial or quasi-judicial function.

It is common practice nowadays for members of the public to use their Members of Parliament for the ventilation of all sorts of grievances, and it is inevitable that protests will be made in the future through Members of Parliament to the Ministers in circumstances very similar to those described above. In our view, when such an approach is made to a Minister by a Member of Parliament, the Member of Parliament should be told immediately that, because the Minister may have the duty to take a judicial or quasi-judicial decision in the particular case, it would be impracticable and improper for him to interfere with the ordinary course of justice under the machinery laid down by the Regulations.

2. **The occasional Departure of the Permanent Officials from Judicial Impartiality for the sake of Administrative Expedience.** Our evidence here consists of a case which took place in 1949 and 1950. Mr. D. of Wolverhampton received a letter from his local Executive Council in which it was suggested that in the case of one of his patients he might have committed a breach of the Terms of Service. Mr. D. replied fully by letter. Some time later he received a further letter from the Executive Council, notifying him that the Dental Service Committee had considered the case and had recommended to the Executive Council that Mr. D. should be severely reprimanded and that the sum of £5 be deducted from his remuneration.

The Service Committees and Tribunal Regulations provide that where a case is considered by a Service Committee, the Clerk of the Executive Council shall give both parties to the case not less than fourteen days notice of the meeting of the Service Committee at which the case is to be heard, and either party is given the right to be present at the hearing and to give and call evidence.

As it was clear that the Service Committee had reached their decision in Mr. D.'s case without giving him the opportunity to appear before them and state his case, the Association took the matter up with the Ministry of Health, pointing out this and other irregularities in the proceedings before the Service

Committee and asking that immediate steps should be taken to prevent the case against Mr. D. going any further. The Ministry agreed that the proceedings were irregular but said that they were accordingly making arrangements for the case to be heard afresh by the Service Committee.

The Association protested against this decision on two grounds. In the first place we argued that it was contrary to justice where the finding of a tribunal was bad because of irregularities in procedure, for the case to be remitted to the same tribunal for a further trial on the same facts. Secondly, we said that if the same tribunal were to hear the case again they would have a natural inclination towards finding the charge against Mr. D. proved for the second time, thereby vindicating the correctness of their first decision and minimising the importance of their past errors.

The Ministry replied saying "in our view it would be in the interests of all concerned and not least of Mr. D., that the matter raised with the Dental Service Committee should be properly investigated and that Mr. D. should be afforded an opportunity of stating his case".

The Association thereupon sponsored proceedings in the High Court, as a result of which the first decision of the Service Committee was quashed by order of certiorari and the Executive Council gave an undertaking that the case against Mr. D. would not be pursued further.

Comment on the Case of Mr. D.

Our complaint against the Ministry officials here is that in their administrative zeal to prevent a possible breach of the Terms of Service going unpunished, they were prepared to adopt a procedure which was contrary to the practice of the civil courts and, in spite of the fundamental irregularities which led up to the first "conviction", encourage the Service Committee to hear the case again.

Moreover, if the case had been remitted to the Service Committee for a second hearing it would have gone before the same tribunal as dealt with it the first time, and that tribunal must have had a natural inclination to demonstrate that their failure to hear the dentist on the first occasion had made no difference.

We are very well aware that because the Ministries' officials are closely concerned in one capacity with the efficient and smooth working of the National Health Service, and with the desirability of satisfying those members of the public who are clients of the National Health Service, they must repeatedly be under the temptation to depart from the standards of strict impartiality when they advise the Minister in the exercise of his judicial and quasi-judicial functions.

We feel, however, that it is of the first importance that the permanent officials should always keep in the forefront of their minds the fundamental difference in nature between their administrative and their judicial functions. They should, we suggest, remember always that under the Service Committees and Tribunal Regulations they are administering a penal machinery and that practitioners in the National Health Service have, therefore, the right to demand that the conduct of the Ministries is above reproach and above suspicion.

British Hotels and Restaurants Association

RENT TRIBUNALS

1. The British Hotels and Restaurants Association is the National Organisation representing Hotels and kindred premises throughout Great Britain.

2. The Association wishes to bring to the notice of the Committee certain features of the jurisdiction and procedure of Tribunals under the Furnished Houses (Rent Control) Act, 1946, as amended by the Landlord and Tenant (Rent Control) Act, 1949. From the experience of certain of its members, the Association consider these to be unsatisfactory.

3. The businesses of many members come within the orbit of Rent Tribunals, and largely because they cater for residents, who stay for long periods and take little or no food on the premises.

Jurisdiction

4. The Association submits that it was clearly not the intention of Parliament that this legislation should apply to hotels, but it does, nevertheless, apply to some hotels, viz.:—

(*a*) Those which supply food but where it is not sufficiently "substantial" to qualify the establishment for exclusion under Section 12 (3) of the 1946 Act.

(*b*) Those which offer little or no catering but are operated as hotels.

The Acts do not draw any distinction between premises where contracts are made as between Landlord and Tenant and those made as between a Proprietor and Guest. Yet it is clear that there is a considerable difference in the obligations of a landlord and a hotel proprietor. A landlord gives exclusive possession to a tenant; but an hotel proprietor retains a right of entry to a guest's room, and carries out such services as cleaning, changing bed linen, maintenance of furnishings, and window cleaning. He also retains the hotel-keeper's right to terminate the contract by notice, and accepts the common law liability of a "lodging house keeper" to take reasonable care of a guest's own property.

Procedure of Tribunals

5. The Association has a good deal of evidence to show that injustices have arisen, not only because the law permits some contracts made by hotel-keepers to become the subject of reference to a Rent Tribunal, but also where the hearing of such references has been unsatisfactory. The principal causes of complaint by members can be summarised under the following headings: (in these paragraphs the terms "landlord", "tenant" and "rent" have been used as this is the language of the Acts concerned, but the Association would point out that more appropriate terms in relation to its members would be "proprietor", "guest" and "Charge", which are the recognised terms of the hotel business).

(a) *Constitution of Tribunals:* It appears that some members of Rent Tribunals lack sufficient business experience to make equitable decisions. It would be helpful if they could be assisted by experienced persons, as is the case for example with the Industrial Disputes Tribunal.

(b) *Reference to Tribunals:* (i) A tenant may without cost to himself apply to a Rent Tribunal for a Reference on a short statement which may with impunity contain inaccuracies or only part of the facts. Instances have arisen where, had the application been full and accurate, the Tribunal might have refused it and the Respondent would not have been put to the expense of a Rent Tribunal hearing. It would be preferable for the facts on an application to be by Affidavit or Statutory Declaration.

(ii) Vexatious and frivolous references are often made and applicants frequently take no further interest in the proceedings. However, the Respondent Proprietor is compelled to go through the whole procedure and be prepared to fight against any reduction of his tariff. In such cases, at the hearing, the Respondent ought to be able to deal only with the frivolous or vexatious aspects of the case without having beforehand, to go to the expense of, for example, giving measurements of rooms, facts and figures of accounts, takings, expenditure, etc.

(c) *Assessment of Rent:* The greatest number of complaints from landlords have been that the rents assessed have been seriously inequitable and have not provided for all the expenses incurred, plus a reasonable profit. In fact, there is no standard method of assessment in use by the various tribunals, nor are the tribunals bound to consider either the capital cost or the running cost of the Proprietor's establishment in assessing a rent. In practice, cases have occurred where little or no regard has been paid to costs, even when audited accounts have been presented.

Assessments appear to be made on the basis that the parties are landlord and tenant of unfurnished accommodation, plus some allowance for the provision of furniture and light and on the understanding that the tenant has exclusive possession. Such a contract is rare in an hotel business. Therefore this basis

is obviously unfair in contracts between proprietor and guest in view of the extra costs and responsibilities involved.

A business can be running at a loss; nevertheless, a Tribunal can order a reduction of rent or rents. This was confirmed in the case of *Rex* v. *Brighton Area Rent Tribunal, Ex parte Marine Estates* (1939) *Limited*, reported at (1950) 1 All E.R. 146 and (1950) 2 K.B. 410.

(d) *Security:* The Rent Tribunal has complete jurisdiction as regards affording a tenant security of tenure for an unlimited length of time. The enormous scope afforded to Tribunals in this respect is governed by the case of *Rex* v. *St. Helens and Area Rent Tribunal* (*later Preston & Area Rent Tribunal*) *Ex parte Pickavance* (1953) 2 All E.R. 438. The Rent Tribunal refused to order security of tenure on the grounds that a notice to quit had been served on the tenant after a period of security had expired and, therefore, they considered they had no power to grant a further extension. The Divisional Court and the Court of Appeal confirmed that decision, but the House of Lords reversed it and held that the Tribunal had the power. The result of that case is that no landlord can give notice to quit without knowing full well that the tenant will doubtless go to the Rent Tribunal. The effect has been to impose a form of permanent security. In the case of an objectionable tenant it is certain that he will take that course. Therefore, the more objectionable the tenant, the more is the landlord likely to be at his mercy.

(e) *Reasons:* The Tribunals give no reasons for their decisions.

(f) *Appeal:* There is no right of appeal from the decision of a Rent Tribunal, unless it exceeds its powers of jurisdiction. In many cases heard by the Divisional Court the Judges have said that there ought to be some form of appeal against the decisions of a Rent Tribunal.

Recommendations

6. The Association would prefer to see the repeal of these Acts on the ground that they no longer serve a useful purpose. Shortage of furnished accommodation, which caused these Acts to be passed, no longer exists.

If, however, it is decided that this legislation must continue, the Association recommends that:—

(*a*) There should be appropriate provision to exclude hotels. The Association thinks that this exclusion should not in any way be related to the supply of food as is specified by Section 12 of the Furnished Houses (Rent Control) Act, 1946.

(*b*) Expert advice should be available to Tribunals.

(*c*) Reasons for a Tribunal's decisions should be made known to the parties.

(*d*) A person making a reference to a Rent Tribunal should be required to make a Statutory Declaration as to the accuracy of his statements and a Tribunal should decline to consider a reference, unless the applicant is present at the hearing.

(*e*) Audited accounts should be accepted as evidence of costs. Alternatively, there should be a standard method of ascertaining such costs; a suggested standard method which was prepared by the Association at the request of the Ministry of Housing and Local Government is attached.(1)

(*f*) There should be a right of appeal to a Court against all decisions of a Rent Tribunal.

Oral evidence

7. The Association would welcome an opportunity to give oral evidence to the Committee to support and amplify where necessary the foregoing observations and recommendations.

(1) Not printed here.

British Legion

Pall Mall,
London, S.W.1.
31st January, 1956.

J. Littlewood, Esq.

Dear Sir,

Committee on Administrative Tribunals and Enquiries

Reference your letter of 29th November(1) regarding the above, the only Tribunals, of which the Legion has had considerable experience, are the Pensions Appeal Tribunals established under the War Pensions (Administrative) Provisions Act, 1919, and the Pensions Appeal Tribunals Act, 1943.

The Legion has represented some 60 per cent. of the many hundreds of thousands of appeals that have been heard since 1919, and is perfectly satisfied with the existing procedure, whereby final decisions are recorded by the Tribunals on questions of fact, with the safeguard of the right of appeal to a High Court Judge where any decision can be challenged as being erroneous in law.

Doubtless you will obtain full details of the rules and regulations governing the working of these Courts from the President of the Pensions Appeal Tribunals.

Yours faithfully,

J. R. GRIFFIN,
General Secretary.

Carmarthenshire and Cardiganshire Baptist Association

Conscientious Objectors' Tribunals in Wales

1. We consider *the task of* any *tribunal* which is called upon to determine the validity of conscience to be, in the last analysis, an impossible one. However, in the present state of society, we recognise the inevitability of having some kind of human agency to discriminate between "valid" and "invalid" cases. Therefore, we record our appreciation of provision for the examination of young men's conscientious objection to military service, while recognising the great difficulty of the judges' task, and its ultimate impossibility.

The rights of objectors

2. Any genuine objection to military service should be given full and fair consideration. Objection to military service on grounds other than those of religion must be recognised.

Verdicts

3. We view with gravity the increasing tendency to refuse complete exemption, while noting with interest the decrease in the number of applicants registered for combatant duties. (*Vide* appended statistics.)

Constitution of Tribunals

4. (*a*) We agree that the Chairman should be a County Court judge or a barrister of at least seven years' standing, while pointing out that not all chairmen with those qualifications have shown the impartiality and fairness which could be expected of them. The Chairman should be competently bilingual.

(*b*) Six other members, as at present, but four of them at least, bilingual. Or, a separate Welsh-speaking panel must be provided. In its absence, there should be a competent interpreter. The Clerk should also be competently bilingual.

(*c*) "In appointing members, the Minister shall have regard to the necessity of selecting impartial persons". This proviso should be more rigorously applied.

(1) The British Legion was one of the organisations specially invited to submit written evidence in the letter of 29th November, 1955.

In the past, it would have been more satisfactory if a militarist on the panel had a pacifist fellow-member to counteract him. The initial bias has always been in favour of the Armed Forces.

(*d*) Since there are more objections on Christian grounds than on any other, we feel it highly desirable that there should be a recognised Biblical Scholar on the panel preferably a recognised New Testament Scholar, who would also be representative of the churches. (If Trade Unions are consulted, there is a strong case for consultation with the Churches in a country which is, at least nominally, Christian.)

(*e*) The average age of the Tribunal members is too high. Conservatism and stodginess are the common accompaniments of late-middle-age and old-age in C.O. Tribunals.

Attitude of Tribunals to Objectors

5. Positively, we call for what has generally been notable for its absence, namely impartiality, patience, and courtesy. Negatively the panel should be non-domineering, non-derisory, and—in obviously valid cases—non-patronising.

Language

6.—(*a*) The Chairman must certainly be competent in both Welsh and English.

(*b*) A separate Welsh-speaking panel should be provided, or else four out of the six members must be bilingual.

Appellate Tribunal for Wales

7. A bilingual Appellate Tribunal should be set up again, as during the war years. The necessity is obvious. The number of cases should not be a factor in determining whether there should be a Welsh Appellate Tribunal or not. (Carmarthenshire County Council and Cardiganshire County Council have both, in November, 1955, passed resolutions on the necessity of re-establishng a Welsh Appellate Tribunal.)

Procedure

8. The objector must not be given the impression that he is a criminal. Therefore, law-court atmosphere and procedure should be eschewed. The holding of meeting in places other than courtrooms is recommended. Unfair, "catch" questions should be avoided. The oath should not be required, and proceedings should be as human and informal as possible.

Announcing of verdict

9. The verdict in *each and every case* should be announced in open session. Minority dissension should be declared. Shorthand record of the discussion of the case by the tribunal members is as necessary as a full and correct record of the hearing of the cases.

APPENDIX

1949–55

Year	*Total*	*Deleted from Conscientious Objectors' Register*	*Unconditional Exemption*
1949	27	7	0
1950	32	25	3
1951	29	16	1
1952	48	21	11
1953	38	10	5
1954	45	12	8
1955	36	4	0
1949–55 *Total*	255	95	28

(Conditional Exemption 99
Non-combatant ... ... 33)

Commons, Open Spaces and Footpaths Preservation Society

INDEX

ADMINISTRATIVE INQUIRIES

Introductory

1. A note on the Society's history and aims, being an extract from one of its leaflets, is contained in Appendix " A ".

2. The Society's memorandum is exclusively concerned with the part of the Committee's Terms of Reference which concerns " the working of such administrative procedures as include the holding of an Inquiry or Hearing by or on behalf of the Minister on an appeal or as the result of objections or representations ". The types of Inquiry or Hearing at which the Society is most frequently represented, together with the statutory authority under which they are held, are listed at Appendix " B ".

3. Attendance and representation at Inquiries and Hearings form so important and so rapidly increasing a part of the Society's work, and the preservation of public amenities is becoming so largely dependent upon the outcome of these proceedings, that the Society feels bound to offer some criticisms of present practice, while suggesting some possible improvements for the future.

General

4. The Society appreciates the purpose and merits of the present system. *Inquiries and Hearings provide a cheap and informal method by which the Minister may, in the course of his administrative duties, and subject to the requirements of the Government's policy, inform himself openly of the different views as to a particular action he is asked to take.* The Society would regret any proposals tending to discourage the legislature from making provision for Ministers so to inform themselves in similar statutes and in similar circumstances. At the same time, the purpose and merits of the system themselves require some further scrutiny.

5. *" Inquiries and Hearings".* The two are distinguished, notably in the First Schedule of the National Parks and Access to the Countryside Act, 1949; but in practice the Society considers that there should be one category only. Hearings are not necessarily public, as are Inquiries; and yet the openness of proceedings of this sort is one of their principle merits: (see Paragraph 11). Hearings enable only persons making representations or objections to be heard; and this is contrary to one of the fundamental assumptions of the Society's memorandum:

(see Paragraph 12). The opportunity for "those making representations or objections to be heard by a person appointed for the purpose" would appear to differ very little from the interview or conference which is part of the normal work and practice of Ministry officials. For these reasons, the Society confines its observations in this memorandum to Inquiries alone, except where it wishes to point the contrast with certain types of Hearing.

6. *"Cheap"*. The cheapness of the present system, especially when compared with the expensiveness of litigation, is certainly a considerable advantage to private individuals, as well as to amenity Societies and other bodies having limited financial resources. There can be little doubt that if proceedings at Inquiries involved much more expense than they do at present, many of the Minister's decisions might have to be reached without consideration of essential points of view. Large Corporations would be greatly favoured and the amenity Societies, particularly, would be at a disadvantage. As it is, cheapness probably results in the opportunity for more widely representative opinions to be expressed. Some of the implications of these general observations on the cheapness of proceedings are considered in Paragraphs 36 and 42.

7. *"Informal"*. The informality of procedure under present conditions also suggests a contrast with the procedure in Courts of Law. On this point the Society must express a more qualified approval. It certainly values the helpful informality with which the time and place of Inquiries are generally arranged; and it appreciates that as long as attendance at Inquiries is voluntary it is desirable for individuals, who have useful information to offer, not to be dissuaded from attending merely by the prospect of having to take an oath or of being cross-examined or of being ruled "out of order" because they did not know the rules sufficiently well. On the other hand, a sympathetic Inspector can always ease the stringency of formal procedure, and experience of the Courts of Law shows that formality of procedure results in a fairer and better informed conclusion than would otherwise be the case. At all events, in Paragraphs 17–19, there are certain recommendations having the effect of introducing a greater element of formality.

8. *"Administrative Duties"*. The Society's observations in this memorandum apply only to such Inquiries as are purely administrative; it submits that, where a judicial element enters in, different considerations are involved. The difference between a judicial and administrative Inquiry is difficult to define, but can be illustrated by one instance, from a single Act of Parliament, with whose operation the Society is rather closely concerned; this is set out fully in Appendix "C". The Society does not wish to comment upon Inquiries involving arbitration or quasi-judicial subject matter, for these are not strictly administrative procedures; but it would like to suggest that if a suitable formula cannot be found to distinguish them, a general Act might be considered similar in principle to the Statutory Instruments Act of 1946, categorising the types of Inquiries. This would at least ensure that when legislation is proposed, under which Inquiries are proposed to be held, definite consideration would have to be given to the question whether the Inquiries are properly administrative in scope and intent and into which category they could most appropriately be placed.

9. *"The Government's Policy"*. If it is accepted that the Minister concerned has an administrative responsibility for the decision reached after an Inquiry, so too it must be recognised that his decision must accord with the policy of the Government. A corollary of this is that the policy of the Government on the specific issues raised must be clearly made known. Constitutionally, this can be achieved by means of questions or debates in Parliament; but the Society's view is that exclusive reliance on this procedure might well be undesirable (partly because decisions would in consequence always be liable to be challenged). The Society feels that it would be far preferable, where the policy of the Government, or if any department of the Government, affects the issue, for he policy to be stated either at the Inquiry or in the final report of the linister's decision. This is discussed further in Paragraphs 16 and 35.

10. *"Inform Himself"*. The Society adopts the words of Lord Thankerton Franklin and Others v. Minister of Town and Country Planning (1947): "The bject of the Inquiry is to inform further the mind of the Minister . . ." This neans, in effect, that the Minister is entirely responsible for the decision subse-

quently reached and that no blame can be attached to the Inspector (if he carries out his duties correctly) in criticisms of the decision. It also means that there can be no basic analogy between Inquiries on the one hand and Courts of Law, quasi-judicial tribunals and arbitrators on the other.

11. *"Openly"*. On any subject on which the Minister requires to be advised, the resources of the Minister's staff are always available; and a Minister is always free to write to those whom he considers are interested parties. But the merit of holding an Inquiry is that the views expressed to the Minister by all except his own Ministry officials are, or should be, raised in public. There can be little justification, when Inquiries are held, for the acceptance by the Minister of secret representations, except possibly in the few cases where public security is concerned, and even there, the fact of public security should be made known. The openness of Inquiries is discussed in greater detail in Paragraphs 15, 26 and 43.

12. *"Different Views"*. At the heart of the Society's proposals is the assumption that Inquiries provide the opportunity for the widest practicable range of different views to be expressed. Parties should not be arbitrarily excluded; spokesmen for Government departments should be presumed to attend where their departments have an interest in the subject-matter of the Inquiry. The reasons for, and consequences of, the Society's assumption are elaborated in Paragraphs 14-16.

Obligatory Inquiries

13. It is curious that in almost identical circumstances, with whioh the Society is familiar, an Inquiry must be held if representations are not withdrawn; may be held if the Minister thinks fit; and may be dispensed with unless the Minister thinks otherwise: (Section 3, Acquisition of Land (Authorisation Procedure) Act, 1946; Section 49, Town and Country Planning Act, 1947; Schedule 1, National Parks and Access to the Countryside Act, 1949). It is felt that where an opportunity for representations to be made is provided by statute, and a representation is made and not withdrawn, then an Inquiry should be held as a matter of course, irrespective of whether the representation has been made by a Local Authority, a Statutory Undertakng or a member of the public. This suggestion is made without prejudice to the principle that, where there is no specific provision for representations to be made, a Minister should, nevertheless, have power, in suitable cases, to hold an Inquiry (e.g., under Section 108 of the Town and Country Planning Act, 1947).

Parties

14. In most cases it is left entirely to the discretion of the Minister concerned to invite persons to attend the Inquiry. Where Hearings are provided for (as already mentioned in Paragraph 5), only those making representations or lodging objections are entitled to be heard, though, in praotice, others are heard as well. In one case, that of an Appeal under Section 29 (6) of the National Parks Act, only the Appellant and the County Council are entitled to be heard; but again, in practice, others are also heard. The Society oonsiders it desirable for some certainty and uniformity to prevail and submits that, where the Minister wishes, or is required, to be specifically informed on a particular subject, it is generally advisable for all those with an interest in the subject to be allowed to attend, the discretionary powers of the Inspector and the possible award of costs being deterrents to persons who vexatiously prolong the proceedings. In other words, what generally happens in practice should be the rule; and statutes should not unreasonably restrict the parties who may attend: still less should the Minister. It is worth noting that the nature and amount of publicity given to forthcoming Inquiries will undoubtedly influence the number and type of parties likely to be interested; this is discussed in Paragraphs 43-44.

15. The Society has already referred in Paragraph 11 above to the advantage of hearing all points of view expressed openly at an Inquiry. This applies to all parties, including officials from Local Authorities and other Ministries. In this connection, attention is drawn to the views expressed by Lord Greene, M.R., in Robinson v. Minister of Town and Country Planning (1947), where he said of

the Minister: " . . . he cannot be confined to the evidence given at the Inquiry . . . he may have . . . material acquired in a purely executive capacity, such as reports and opinions obtained from sources within or outside the Ministry". The Society would agree that the Minister's own servants should assist him in his decision and that in exceptional circumstances it may be inconvenient, embarrassing or impossible for other Ministries to make known their views at an Inquiry. But it submits that, as a general rule, an Inquiry should be regarded as an opportunity for points of view both from official and unofficial sources to be expressed and that the representatives of these sources should be parties to the proceedings. (In the exceptional circumstances mentioned the effect of the views expressed on the Minister's decision should be referred to when the reasons for his decisions are made known.) The Society rejects the view that Inquiries are a purely collateral means by which the Minister informs himself—just another volume of information he has to consider along with the rest. Where an Inquiry is held, the Minister's subsequent decision should be definitely related to the findings of the Inspector. This still leaves the Minister complete discretion, but ensures the necessity of hearing all interested parties.

16. There are several precedents, which the Society welcomes and would like to see followed, for the representation of Government Departments at Inquiries. Thus, the Minister of Transport appears to be showing an increasing readiness to send representatives, who explain his views and submit to cross-examination, to Inquiries where the construction of trunk roads is concerned. Several Ministries may be represented at Inquiries held by the War Works Commission, under Section 17 of the Requisitioned Land and War Works Aot, 1945; and in one recent instance, a representative of the Minister to whom the War Works Commission had to send its report attended the Inquiry, in order to give a brief history of the subject-matter from the material on the Ministry's files. These precedents tend to show how far some Ministries have moved in recent years, and how possible it may be to persuade other Ministries to follow suit.

Procedure

17. It is all too often the case that parties and their representatives arrive at Inquiries with no idea as to what procedure will be followed: this is inconvenient and does not make for the best presentation of points of view. It is true that certain Inquiries of the same type tend to follow a similar pattern (e.g., those held under Section 16, Town and Country Planning Act, 1947); that Inspectors of the same particular Ministry may adopt the same procedure in all the Inquiries for which they are responsible; and that some Inspectors announce at the beginning of the Inquiries what course will be taken. But though welcome in themselves, these are insufficient guarantees of certainty and fairness, particularly to those who (like representatives of amenity Societies) have to attend different types of Inquiries held by different Ministries. The Society therefore suggests that one or other of the following two remedies might rectify the position: firstly, and preferably, that there should be a uniform procedure on the principle described in the next paragraph; secondly, and alternatively, that before an Inquiry is held, the Minister should notify parties of the procedure which he will instruct his Inspector to adopt (a practice which appears to be followed by the War Works Commission).

18. The general principle referred to above, upon which the Society considers that the procedure might well be based, is for the proceedings to be opened by the party seeking in some way to alter the status quo: e.g., by the local authority who wishes to enclose part of a common, by the landlord wishing to build on what has hitherto been an open space, by the farmer who wishes to divert a footpath over agricultural land. (In appeals proceedings should generally be opened by the appellants, though this is not always the case.) Thus, a person wishing to alter the extent of a common, the use of land or the course of a footpath should be required at the very outset to justify the change. Thereafter, the Inquiry should follow very generally the lines of Court procedure, with a right to reply at the conclusion of proceedings.

19. A point which may have an important bearing on the procedure followed at the Inquiry is whether the parties concerned know in advance the other parties' views. The present practice appears to be for the Minister concerned to ask "objectors" to state the concise grounds of their objection before the Inquiry, and presumably he then passes on the information to the applicants. (Sometimes this is apt to be a one-way process; at other times it leads to a long and wrangling correspondence between applicants and objectors with the Minister as a "forwarding officer".) Some general rule is clearly desirable, since it is most inconvenient not to have some knowledge, however brief, of the other parties' views; and parties in this position might well be entitled to ask not to be required to speak first, and even to request, where necessary, an adjournment of proceedings after the opening submissions have been heard.

Representation

20. One of the healthier illustrations of informality at Inquiries is that, in addition to being allowed to appear in person or to be represented by barristers and solicitors, parties may even express their point of view through some other agent or friend. The Society particularly values this concession, since it is often invited to present a case on behalf of objectors or appellants where it has not necessarily lodged an objection or appeal itself; or, more frequently, is invited to present the views of all the objectors where it is one of several parties objecting. The Society has no recollection of such a proposal being refused by the Ministers or their Inspectors; but in view of the fact that some difficulty has been experienced at Hearings conducted by certain Local Authorities (e.g., under Section 29 (4) of the National Parks Act) it feels that the point is worth stressing.

21. The Society feels that, if any restrictions were placed upon the form of representation at Inquiries—if (for instance) it were limited to representation by barristers and solicitors, one or other of two somewhat undesirable results might follow. On the one hand, the necessity for professional representation would inevitably increase the cost of attendance at Inquiries, with all the disadvantages to less prosperous individuals or organisations which that implies. On the other hand, many private individuals would be inclined to appear in person; and this must have its dangers. Indeed, the Society feels that private individuals should not be misled into thinking (e.g., by Form T.C.P. 201/47) that they are likely to be able to present their case with equal effect themselves. However informal Inquiries may be, and however fair the Inspectors, a certain skill will always be necessary for the arguing of a point of view, and, still more, for the handling of witnesses.

Witnesses

22. If, as the Society suggests, Hearings are no longer an alternative to Inquiries, and if all Inquiries are subject to Section 290 of the Local Government Act, 1933, then there will be uniformity in the matter of witness-summons, for which the Section makes adequate and suitable provision.

23. Inspectors seem to vary rather considerably in their acceptance of written evidence. Some uniform and consistent policy on this matter might well be desirable, since it might make the difference between a potential witness being present or absent; and the presence or absence of a witness might decide a case. The Society feels that, generally speaking, so long as parties are clearly informed that it cannot carry the same weight as oral evidence, written evidence should be admissible. Correspondingly, the Society feels that written submissions should also be admissible, but should be read out at the Inquiry, or otherwise made available to the parties present.

Inspectors

24. The practice of the different Ministries varies at present, in that some Inspectors attached to the Ministry responsible for the Inquiry are full-time Civil Servants, while others are not employed by any Ministry (and even make a point of declaring the fact at the commencement of the proceedings). It is difficult to make any theoretical criticism of the discrepancies since, in practice,

the Society finds that Inquiries in general are most fairly conducted. At the same time, Inquiries would probably commend themselves more to members of the public, and give a better impression of fairness, if the Inspector were not so directly identified with the Ministry itself. The Society wishes, however, to emphasise the point which it makes later in Paragraph 34; the Inspector has no inherent authority of his own.

25. A closely connected point is whether the Inspector should have certain qualifications. In view of the Society's recommendation in Paragraphs 36-41 below with regard to appeals, it is probably most desirable that the Inspectors should be qualified lawyers, since it will clearly be important that they should be thoroughly alive to the procedural defects which could result in the "quashing, variation or reversal of the decision, recommendation or report". In any event, it is desirable on general grounds that the Inspector should be familiar with the "principles of natural justice", particularly as Inquiries have already assumed a form at least comparable to that of a Court of Law. If qualified lawyers are selected to carry out the work of Inspectors, it might well be better for persons outside the Ministries to be selected, though the Society is familiar with one instance where a member of the Ministry's legal staff is regularly appointed to hear appeals. This is a satisfactory practice so far as it goes, subject, firstly, to the point raised in the preceding paragraph, and, secondly, to the probability that there are insufficient qualified lawyers for the task available within the Ministries.

Inspectors' Reports

26. The Society would welcome the publication of Inspectors' reports. The practice would accord with the whole conception, implicit in this memorandum, of administrative Inquiries, and of the essential openness and fairness of their proceedings. It would ensure that parties to those proceedings knew their points had been taken and correctly interpreted. It would reduce considerably any suspicion that extraneous material reached the Minister after the Inquiry had been held. It would provide a basis upon which the Minister's decision could be made known.

27. So long as it is clearly understood that the Minister's discretion is not fettered by the Inspector's recommendations, it is difficult to see what objection there can be to the publication of the Inspector's report, particularly in view of the precedents for it. From the Minister's point of view, it is better that a faulty report should be challenged, than a decision based upon a faulty report (e.g., in the Courts). At the same time, the Society does not wish to entrench upon "the long established principle that officials should advise the Minister in confidence" (H.C. Off. Rep. 16/12/55 Col. 1633); though, for this purpose, if its views in Paragraph 24 above are accepted, the Inspector himself will not be an officer of the Ministry; and the Minister's own officials will still be free to minute the Report, if he so directs.

28. The Society is fully alive to the objections which have been raised to the publication of Inspectors' reports and has borne in mind particularly the classic statement of these objections in Lord Shaw's judgment in Local Government Board v. Arlidge (1915) A.C., at Page 137. He says that it would be an impediment to the frankness of officials and that it would necessarily lead to the disclosure of the whole file. Both points are to a large extent allowed for in the Society's reservations in Paragraph 15 above in favour of the Minister's own officials; but it is clear that the publication of the whole file on a case can present serious problems. But is it really necessary? The answer seems to be this: that if the Minister's file contains any material which comes from a source outside his own Ministry, his wisest plan is to invite the author of that material to the Inquiry. This would certainly conform with the principle which the Society has set out in Paragraph 12 on the attendance of different parties at the Inquiry; it would result in a fuller and more open exposition of the material on the file; and it would render production of the file itself wholly unnecessary. The Society considers that, although the decision of the Court of Appeal was eventually reversed in the case of the Local Government Board v. Arlidge, one of the clearest arguments in favour of the publication of Inspectors'

reports is contained in the judgment of Buckley, L.J., (109 I.T., at Pages 659-60), part of which is, in fact, quoted in the concluding paragraph of this memorandum.

Delays

29. The Society must express its concern at the very long delays which frequently take place between the holding of Inquiries and the publication of the Ministers' decisions. It is difficult to discern the cause of the delays—they may be due to the time taken by Inspectors in preparing their reports, or to the officers of the Ministry adding Minutes of their own. (No doubt publication of the Inspectors' reports, suggested in the preceding paragraph, would help to indicate where the faults lay; and the employment of Inspectors outside the Civil Service might help to relieve any congestion within the Ministries.) Several times within the Society's recent experience, delays of this sort bave greatly weakened the effect of the decision ultimately reached.

30. The Society would deplore any use being made of the period which elapses between the Inquiry and the Minister's decision for the purpose of acquiring further information bearing on the suhject at issue. It considers that the decision in Errington v. Minister of Health (1936) was most salutary, and that the principle underlying the decision might well be extended. The general rule, should be (except perhaps in cases where security is involved) that the Minister ought not to seek the views of persons outside his own Ministry following the Inquiry. When the rule is not followed, delays are bound to ensue.

Ministers' Decisions

31. The Society considers that, whenever an Inquiry is held and is followed by a Minister's decision, that decision should always be accompanied by a statement of the Minister's reason or reasons for reaching it. The Society appreciates that this is the usual practice at present, and fully recognises that it would be virtually impossible to prescribe hy legislation the amplitude of the reasons quoted. But a few lines are often sufficient to indicate what weighed most with the Minister; and it would probably not be difficult to ensure by legislation that hare decisions, given without any indication as to why they should have been reached, should be invalid. The justification for giving reasons is that, although the Minister's decision is admittedly, and very properly, discretionary, it should not he arbitrary, nor appear to be arbitrary: public approval of the form of decision, if not necessarily of the decision itself, is essential.

32. If the Inspector's report is published, the Minister's task is easier; he can either announce his acceptance of the report (which may be a very convenient alternative to setting out his reasons in full), or he can reject it for reasons which he should state. It certainly is important that where the Minister disagrees with the report, or where he reaches a decision that does not seem to be based upon any of the submissions actually made at the Inquiry, his reasons should be stated in full. It may be that his decision is based upon some conflicting consideration of policy, in which case memhers of the public are entitled to know what that policy is, to see it properly applied, and to check that it is consistent. It may be that the decision is influenced by considerations of security, in which case it is essential, and should generally be sufficient, to say that security matters are involved.

33. There is a difference in the practice of certain Ministries with regard to the recital of facts where reasons are given for Ministers' decisions. The Society welcomes the practice of reciting the relevant facts which led the Ministers to their decision, but considers that if the Inspectors' reports are published and are accepted by the Minister as a basis for his decision (whether he follows it or not), there is no need for a second recital.

34. The Society considers that delegation of the Minister's decision to the Inspector would he incompatible with the purpose for which Inquiries are held, as noted in Paragraph 10 ahove.

35. Where the Ministers' decisions are governed hy matters of policy, or where Ministers intend for any reason to follow a certain consistent line in a particular type of decision, it is most important that the leading decisions should he readily available for reference by the public. The Bulletin of Selected Planning Decisions

is most helpful; and there should be an opportunity for the public to consult past decisions in all matters liable to arise at Inquiries. The Minister's general policy should be made known in the usual political and constitutional ways; but there are bound to be many decisions in which consistency is apparent, but no policy question of great importance raised. It is these decisions which need to go on record to serve as useful guides and precedents for the future.

Judicial control

36. As a voluntary organisation with limited resources, the Society would naturally regret the introduction of any system of appeals to the High Court tending to increase substantially the financial risk of submitting objections and representations at Inquiries. In reaching this conclusion, it distinguishes between four different ways in which judicial control may be exercised: firstly, in reviewing the merits of the case; secondly, in quashing Reports and Decisions which are ultra vires; thirdly, in quashing Reports and Decisions where there has been a failure to comply with Statutory requirements; and, fourthly, in reviewing the conduct of proceedings at Inquiries and between Inquiries and Ministers' decisions.

37. "The merits of the case". Assuming that the principal recommendations in this memorandum are accepted, the Society would deplore any suggestion that the Minister's decision on the subject-matter of the Inquiry should not be final. The decision is entirely within his discretion; there is no other person or tribunal to whom any appeal from the decision could appropriately be made; and, if appeals lay to the High Court, they might tend to become automatic whenever the Minister's decision were unfavourable to a party wealthy enough to challenge it.

38. "Ultra vires". There is a standard wording, under certain statutes, for the procedure which may be adopted in order to quash a Minister's decision (e.g., Section 11 (2), Town and Country Planning Act, 1947; Paragraph 8, Schedule 1, National Parks and Access to the Countryside Act, 1949). This procedure is satisfactory, so long as Ministers are not prevented from re-introducing an Order where their decision to confirm an earlier Order has been quashed on account of an irregularity. The Society notes with approval the decision on this point in Richardson v. Minister of Housing and Local Government (1956).

39. "Failure to comply with statutory requirements". The standard wording referred to in the previous paragraph also applies to this contingency. It is a very proper principle; but it seems unfortunate that application should have to be made in the first instance to the High Court. As it generally involves matters of fact, it could be left to Quarter Sessions or even to Petty Sessions. This would be simpler, cheaper and more appropriate.

40. "Conduct of Proceedings". If, as is suggested in Paragraph 17 above, certain general rules or principles are introduced for the conduct of proceedings, it seems right that there should be a remedy for failure to observe them. If the rules are laid down in the form of a Statutory Instrument, a breach would give an aggrieved party a right to make an application to the Courts on the grounds of a failure to comply with statutory requirements, as described in the previous paragraph.

41. This latter suggestion represents an increase of judicial control; but the Society merely proposes a moderate extension of a process that is already well established. It fully appreciates that the proper way of challenging a Minister in the exercise of his administrative functions is by Parliamentary means. It feels that this is certainly the only way to question matters of policy. But there are many drawbacks in relying upon Parliamentary questions and occasional adjournment debates as a means of criticising the conduct and consequences of administrative Inquiries. This would be as undesirable, in the Society's view, as the introduction of a comprehensive system of appeals to the Courts. Ministers are answerable to Parliament; they are also subject to the law; the Society's proposals seek to ensure a proper balance between these two forms of responsibility.

Costs

42. The Society has already referred to the possible disadvantage of excessive expenses being incurred at Inquiries, and understands that, at present, costs have only to be paid by parties (under Section 290 of the Local Government Act, 1933) in cases where there is a "vexatious litigant", and these cases are rare. This seems a satisfactory practice, and points the contrast with the system of Court costs.

Publicity

43. Public Inquiries are, by their very nature, open to members of the public to attend, as well as to the press. The same is not, however, true of Hearings; and if the Society's recommendations with regard to Hearings are accepted, then all Inquiries of this nature should be open to the public. It considers that this is an important principle, and that Inquiries gain far more than they lose through being open for the public and the press to attend.

44. The Society feels that insufficient publicity is given to the holding of certain Inquiries. The practice varies at present. There is a strong case for standardising the practice, perhaps by requiring that proposed action by the Minister, as well as notices of Inquiries and their results, should always be published in the London Gazette and two local newspapers.

45. It very often happens that an Order which is applied for (e.g., under Section 49 of the Town and Country Planning Act, 1947) is the subject of an Inquiry, and is subsequently refused or withdrawn. No public notice is given when this happens, and, since many orders affect the rights of the public, and not merely the parties represented at the Inquiry, it is felt that similar provision should be made for publicising the outcome of the Inquiry, as for giving notice of the Inquiry itself, as suggested in the preceding paragraph.

Conclusion

46. Administrative Inquiries are not set up primarily for the purpose of dispensing justice. But the administrative and judicial processes are, in many ways, so closely connected, that it is essential to take every procedural step to prevent administrative decisions from bearing the marks of injustice. Inquiries have been provided for by the legislature in a form corresponding more closely to the judicial than, for instance, to the inquisitorial; and they are inevitably associated in people's minds with Courts of Law, although their function and purpose are so very different. It is, therefore, incumbent upon the legislature to ensure that they have as many of the procedural safeguards to justice and fairness, which characterise Courts of Law, as are compatible with their essential object. "It is of the first importance that their proceedings should be so conducted as to command the confidence of the public and that the principles applicable in their conduct should be well understood."

APPENDIX "A": (See Paragraph 1)

Objects of the Society

To preserve for the public use all Commons and Village Greens; to advise Local Authorities and others on securing and preserving Recreation Grounds and other open spaces; to protect the beauty and promote the fullest enjoyment by the public of National Parks; to preserve public rights of way over footpaths, towpaths, bridleways, driftways and carriage roads; to protect roadside wastes; to obtain, where necessary, and preserve access to "open country", including cliffs and seashore; to promote the fullest enjoyment of the countryside generally and to advise Local Authorities and the public on all questions relating to any of the above matters.

The Society was founded nearly ninety years ago to save such well-known London commons as Wimbledon, Hampstead Heath and Epping Forest from enclosure. Its success in these early fights encouraged the Society to widen the scope of its work to include not only the metropolitan but all commons in

England and Wales, and later—in 1899—the preservation of public rights of way. The Society works on non-political lines, and entirely independently of any State aid.

The Society now advises County, District, Borough and Parish Councils, Conservators of Commons, Ramblers' Area Committees and other voluntary societies and the public generally how to ensure the protection of commons, village greens and other open spaces, footpaths, bridleways, roadside wastes, etc.; watches all Bills brought before Parliament which affect rights of way, commons, open spaces and access to the countryside, and takes steps to safeguard such amenities; promotes and assists by advice the acquisition of open spaces for the public or the provision of them under the various relevant Acts; considers every proposal to take common land for building or other uses which would deny full access to the public, and opposes this where necessary; considers all proposals to close or divert public paths under the various enabling Acts in that regard and takes steps to secure the best alternative routes for the public; opposes the misuse of commons and open spaces by vehicles and the scattering of litter; upholds generally a high standard of behaviour and of respect for the rights of others amongst those resorting to open spaces or using public paths; circulates a quarterly Journal to all its members, containing authoritative articles, advice, notes, reports on legal decisions, replies to questions, book reviews, etc., dealing with matters within the scope of its work; and publishes pamphlets from time to time on questions of importance relating to Commons, Open Spaces and Public Rights of Way.

APPENDIX "B": (See Paragraph 2)

Inquiries, Hearings and Appeals, with which the Society is concerned, include those held under the following statutes:—

Commons Act, 1876: S. 3	(Enclosure of Commons)
Law of Property Act, 1925: S. 194 ...	(Building Works on Commons)
Housing Act, 1936: S. 46	(Closure of Highways)
Town and Country Planning Act: S. 23	(Closure of Highways)
Requisitioned Land and War Works Act, 1945: Park III	(Closure of Highways)
Acquisition of Land (A.P.) Act, 1946: S. 3	(Closure of Highways)
Town and Country Planning Act, 1947: Ss. 15 and 16	(Planning Appeals)
Town and Country Planning Act, 1947: S. 49	(Closure of Highways)
National Parks and Access to the Countryside Act, 1949:	
S. 29	(Survey Provisions—Appeals)
S. 43	(Highway Repairs—Appeals)
S. 48	(Review of Access Requirements)

APPENDIX "C": (See Paragraph 8)

Under Section 61 of the National Parks and Access to the Countryside Act, 1949, a local planning authority is under a duty to carry out a review of access requirements within its area; and, if representations are made with regard to the authority's decision, Section 62 (4) provides that a local Inquiry (or Hearing) may take place, after which the Minister's decision on the subject may be given. This, in the Society's view is a purely administrative decision.

Under Section 27 of the same Act, county councils are required to prepare a map of rights of way, showing all such rights of way as are known to subsist, or are reasonably alleged to subsist, on a certain date ; and Section 29 provides for appeals to the Minister of Housing and Local Government, in cases of omissions from the map. In other words, the Minister has to decide at these appeals whether or no a particular path is public ; and he must do so on the evidence, after legal argument, and, where necessary, by reliance on case-law and statutes. It is submitted that this is a purely judicial decision, which has to be reached on the same basis, though in different circumstances, as in a Court of Petty Sessions (where a path must be proved to be public for the purpose of a prosecution under the Highway Act, 1835), a County Court (where damages are sought for injury received from an obstruction on a contested path), or even the Chancery Division of the High Court (where, in an action for trespass, the defence is that the alleged trespasser was using a public path.) It is significant that, under Section 31 of this same Act, one of the parties to these appeals has a virtual right of appeal to a Court of Law.

(In selecting these two sections as an illustration of the contrast between an administrative and a judicial decision, the Society does not wish, at least for present purposes, to imply any general criticism of either section ; the sections have both merits and defects in operation, and any criticisms of their operation are not necessarily germane to the subject of this Memorandum.)

Communist Party

25th April, 1956.

The Chairman,
Committee on Administrative Tribunals and
Enquiries.

Dear Sir,

Memorandum of Evidence of the Lawyers Group of the Communist Party

The Lawyers Group of the Communist Party is desirous of giving oral evidence to your Committee.(1).

The points in support of which it desires to give more detailed evidence are set out below—

The Constitution of Tribunals

1. At the present time a number of tribunals are composed in part of representatives of the trade union movement, i.e., the representative of insured persons on local Appeal Tribunals appointed under the National Insurance (Industrial Injuries) Act 1946. In our view this principle of democratic representation should be strengthened and applied to other tribunals.

The Working of Tribunals

2.—(i) In instances Tribunals are fettered by limitation in powers which those appearing before them rightly regard as technicalities or unjust.

(ii) There should be a definite, clear and simple written code of Procedure for each Tribunal along the lines set out below, subject to such modifications as are necessary to meet the particular jurisdiction of the Tribunal.

Every Tribunal should be under the mandatory obligation to ensure that persons appearing before them knows and are able to exercise all their rights under the Code.

This simple Code of Procedure should provide that—

(i) Unless the parties agree otherwise, hearings should be in public.

(ii) Tribunals should not be tied to formal rules of evidence.

(1) The Lawyers Group were invited to give oral evidence. They replied that " they find themselves unable to do so ".

(iii) All parties should be properly informed of the case which they have to meet.

(iv) All parties should be given proper opportunity of stating their case.

(v) If witnesses are tendered, the tribunal should (if their evidence is material) hear them and allow cross-examination.

(vi) The tribunal should keep a sufficient record of the evidence.

(vii) Any party or properly interested person should be entitled to require the reasons for the decision to be given by the tribunal in writing.

3. We are opposed to the suggestion that there should be an Administrative Division at the High Court. In our view the present system based on the old prerogative writs is completely outdated and should be ended. In its place the High Court should be given powers to decide upon notice of motion by the proper aggrieved party to determine whether a tribunal in arriving at a decision, acted without or in excess of its jurisdiction, failed to exercise a power which it was required to exercise or has acted contrary to the Code of Procedure.

We are against any appeal from Tribunals to the High Court on questions of fact.

4. While Industrial Tribunals have been excluded from the consideration of the Committee we must stress that certain of these Tribunals are Administrative Tribunals and that general recommendations made by this Committee or new legislation by Parliament may well apply to Industrial Tribunals unless these Tribunals are expressly excluded. We urge the Committee in its report to stress that any recommendations do not apply to Industrial Tribunals and that such Tribunals should be excluded from any legislation which flows from the Committee's report.

We are totally opposed to any interference by the Courts with the machinery or findings of Industrial Arbitration or Industrial Tribunals.

The above is the outline of the matters in respect of which our Group of Lawyers desires to give further oral evidence.

I trust that your Committee will accede to our request and that you will inform us in due course of the date on which your Committee will be taking the evidence. We would appreciate as much notice as possible.

Yours faithfully,

HARRY POLLITT,

General Secretary.

Co-operative Wholesale Society Limited

The Co-operative Wholesale Society has reviewed its experience of Tribunals and Enquiries within the terms of reference of the Committee, and submits comment on one or two matters:

(1) *Rating Assessments* (Appeals to the Local Valuation Court, and if necessary to the Lands Tribunal, against decisions of the Valuation Officer).—We have appeared before many Local Valuation Courts, and our experience is that their level of ability and competence varies widely. The Court is composed of members drawn from a panel constituted by the Rating Authority (County or County Borough Councils) with the approval of the Ministry of Housing and Local Government. So far as it is possible to generalise, it may be said that the tendency is for the Valuation Courts in large cities and urban areas to be fairly competent (because their members have the necessary experience) but the Courts in the country districts are much less reliable.

(2) *Ministry of Housing and Local Government Enquiries under the Town and Country Planning Act*, in the lodging of appeals against

(*a*) a decision to refuse planning permission for building development, etc.:

(*b*) proposals for compulsory purchase of property:

(*c*) proposals to impose onerous restrictions and conditions for development:

(*d*) proposed development plans issued by Local Authorities.

We have had considerable experience of these Enquiries. In general the procedure adopted is informal but on the whole very fair: the appellant has considerable freedom in presenting his case and calling witnesses, and the Inspectors are generally most successful in holding a fair balance during the Enquiry between the requirements of the various parties interested.

Our major criticism is of the delays that occur. With appeals against the refusal of planning permission, etc., there is usually a delay of two or three months, between the notice of appeal being lodged and the date of the Enquiry by the Minister. After the Enquiry there is usually a further delay of several months before the Minister's decision is published. When these delays are added to the time previously taken by the Planning Authority to arrive at their decision, the cumulative effect can be very serious, especially where the projected purchase of a property is dependent upon obtaining planning permission.

When the Society has had occasion to object to a development plan the delays have been even greater, and it has been our experience that the Minister's decision on a development plan of a large town or borough has been delayed not merely for months but for several years.

(3) *Agricultural Marketing Schemes.*—We have participated in several Enquiries held by authority of the Minister of Agriculture to consider objections lodged against schemes under the Agricultural Marketing Acts. If a scheme is prepared by a Reorganisation Commission appointed by the Minister, the Commission hears the views of all interested parties before making its recommendations. Most Schemes, however, have been prepared by representatives of producers and such groups are under no obligation to inform other interests of their proposals.

If objections to such schemes are made within the machinery laid down the Minister orders a Public Enquiry at which objectors argue their case before a Commissioner and face cross-examination by the promoters. The hearing is public, but all parties to a Public Enquiry of this nature are left in ignorance of whether or not they have proved their case. The Commissioner reports privately to the Minister, who then communicates with the promoters, but not with the objectors, before determining the final text of the Scheme to be laid before Parliament for acceptance or rejection.

In our view the whole emphasis of this procedure is wrong. It would be at least a partial safeguard if the report of the Commissioner who conducts the Public Enquiry were made a public document. Objectors would thus have some indication of the extent to which they had established their case, and could compare the Commissioner's report with the final Scheme.

We would submit as a general observation to the Committee that the findings or report of any Tribunal or Enquiry should be made public unless the responsible Minister can show satisfactory reason to the contrary.

District Councils Association for Scotland

Council Offices,
Larkhall.
9th April, 1956.

Dear Sir,

Committee on Administrative Tribunals and Enquiries

The Executive Council of this Association has considered your circular of 29th November last(1) and has agreed to recommend that in any matter affecting a local area the views of the local Council should be asked for if it is a matter

(1) The Association was one of the organisations specially invited to submit written evidence in the letter of 29th November, 1955.

affecting the community and that, if possible, the enquiry should be held in the area of dispute. This is usually done but the local Council is not always asked for its views and sometimes a County Council is asked to express the views of a local area and often this view is not the view of the local elected Councillors on the District Council.

Yours faithfully,
J. S. CAMPBELL,
Honorary Secretary.

The Secretary,
Committee on Administrative Tribunals and Enquiries.

Dock and Harbour Authorities' Association

1. The Dock and Harbour Authorities' Association (hereinafter called "the Association") is comprised of all the principal dock and harbour undertakings in the United Kingdom other than those owned by the British Transport Commission.

There are 89 members of the Association and they provide accommodation for over 75 per cent. of the shipping of the United Kingdom. The remainder is accommodated at ports owned by the British Transport Commission.

The Association represents the common interests of all its members and was constituted for the purpose of dealing with those common interests on their behalf.

2. The Association do not concern themselves with matters affecting employers in their relationship with employees and they do not, therefore, intend to comment upon this aspect of the matter in so far as your Committee propose to consider it.

3. Apart from such tribunals and enquiries, the Association are principally concerned with local enquiries, held under the provisions of the Town and Country Planning Acts, 1947 to 1954. They are directly concerned with regard to development plans and with the refusal (or the granting subject to conditions) of permission for them to carry out development within a port area which does not fall within permitted development, and are concerned indirectly where the application for development is made by a tenant.

4. The Association apprehend that your Committee will receive evidence covering all aspects of these matters from representative bodies, such as The Law Society and The Royal Institution of Chartered Surveyors and they do not wish to duplicate the representations made to your Committee. Port planning, however, is a matter of such importance that the Association think it right to set out, quite shortly, their views on certain matters in relation to planning enquiries and appeals.

Procedure

5. The Association consider it to be desirable that the procedure to be followed at enquiries should be laid down and that the planning authority should be required to commence the proceedings by outlining and supporting their case.

The old practice, where the appellant was required to state his case first, when very often he did not know the reasons which had prompted the planning authority to refuse planning permission, was obviously unsatisfactory and the Association do not consider that the recent alteration in practice whereby the planning authority state their case first, should be dependent upon agreement between the parties. It should, in their view, be laid down as normal procedure.

6. It is also felt by the Association that the present procedure governing planning enquiries is unnecessarily long. It may take anything up to six months or longer between the time when an application is submitted and the result of the enquiry is known, during which time urgent port development may be held up.

Independent Inspectorate

7. The Association are strongly of the opinion that some form of independent inspectorate should be set up in relation to local enquiries, possibly by the creation of an independent inspectorate under the Lord Chancellor, from which inspectors would be appointed to conduct any enquiry held by a Minister of the Crown.

Views of Government Departments

8. Tbe Association consider that the views expressed by Government Departments, which may have been a major factor in influencing a decision against which an appeal is made, should be open to diseussion at the enquiry. At present, neither the appellant nor the objectors to a planning enquiry see tbe report, evidenee is not given by the Ministry concerned in support of the report and tbere is therefore no opportunity to cross-examine and test the validity of the Ministry's objeetion.

The Association submit that where views of any Government Department are relevant faetors in reaching a decision in eonnection with which an enquiry is held, those views should be made available to the parties in advanee and should be open to discussion at thc hearing, whether or not oral evidence is given at the hearing in support of the views.

Publication of Inspectors' Reports

9. The Association believe it to be most desirablc, as a matter of eommon justice, that an appellant should be able to satisfy himself that all the relevant faets addueed at the enquiry have been brought to thc notice of the Minister. For this reason they consider that the inspector's report should be published.

Reasons for departure from recommendations

10. It is appreciated that the criticism formerly made—that the Minister did not give reasons for departing from the recommendations of the inspector—has been met in part more recently by the Minister, in conveying his decision on planning appeals, giving a brief resumé of the arguments advanced by the parties, together with his conclusions.

The Association believe that it is desirable that the Minister should be required to give his reasons for reaching his decision to the parties and to any other persons or bodies who havc appeared at the enquiry, unless he certifies in a particular case that it would be injurious in the public interest to do so for security reasons.

11. The Association also believe that the Minister should be required to notify all objectors to development plans of the decisions reached by him in confirming or modifying the plan and that it should not be left, as it is at present, to the objeotors to inspect what is often a small-seale plan and to endeavour to determine from it how their particular objection has been dealt with.

Determinations under section 17 of the Town and Country Planning Act, 1947

12. Under section 17 of the Town and Country Planning Act, 1947, where a local planning authority determine that a proposal involves development within the meaning of the Act, the appellant has a right to appeal to the Minister. The determination is on a question of law and no policy is involved. Whilst tbe Association appreciate that with the abolition of development charge fewer determinations under section 17 are likely to be made, they consider that, when an opportunity arises, the section should be amended so that an appeal will lie to an independent tribunal or court and not to the Minister.

Federation of Registered House-Builders

Introduction

1. The Federation of Registered House-Builders which is the House-Builders' section of the National Federation of Building Trades Employers is the representative body of housebuilders pledged to maintain sound standards of design and construction in housebuilding and to encourage the provision of houses by private enterprise. Its membership includes many small housebuilding firms as well as the larger estate developers in England and Wales.

2. The right to buy, hold and develop land is an essential part of the operations of private housebuilders, and any interferenee with that right may prevent them from carrying on their business of building houses for sale or for letting. There are various circumstances in which housebuilders may be prevented from

developing land purchased for their business purposes. For example, there may be proposals for compulsory purchase, planning permission may be refused or granted conditionally, or the land may be scheduled in a development plan as an open space or for some type of development other than housing.

3. The Federation's evidence will be concerned with enquiry and hearing procedures relating to objections to proposals to acquire land and to other proposals which affect freedom of development such as refusal of planning permission and the allocation of land in development plans.

4. In preparing this evidence the Federation has assumed that, in order to appreciate the background to the various formal enquiries, the Committee will wish to enquire not only into the actual holding of such enquiries but also into all the stages of the procedure from the initial action, such as an application for planning permission, to the final stage of the Minister's decision.

General Principles

5. The Federation believes that, whenever there is a possibility that an owner of land may be deprived by administrative action either of the land itself or of the right to use if freely, it is important that the owner should—

(*a*) have full opportunity to object to the action proposed ;

(*b*) have the right to state at an enquiry his reasons for objecting and the opportunity to hear and comment upon the reasons advanced by the public authority concerned for depriving him of the land or for interfering with his right to use it in a particular manner ;

(*c*) be assured that there will be no undue delay in the promulgation of the decision ;

(*d*) know that the case he submitted at the hearing has been fairly and fully presented to the Minister before the decision is given ;

(*e*) be informed of the reasons for the Minister's decision.

6. The Federation would not wish to suggest that the present procedure in the types of cases with which it is concerned is wholly unsatisfactory ; indeed, in many respects it works well. It does, however, feel strongly that there are certain improvements which ought to be made so that the parties concerned may feel that their cases are properly considered. The two main complaints are the suspicion of unfairness arising from the fact that the enquiries are conducted by inspectors appointed by the Minister who takes the final decision and the delay which usually occurs before the Minister's final decision is given.

7. While it is not desired to suggest that there is any evidence which could be submitted to your Committee that cases do not receive fair consideration the frequently expressed opinion that at these enquiries the scales are unfairly weighted against the private developer makes it all the more desirable, in the Federation's view, that the procedure should be such that the interested party has no grounds whatever for any complaint that justice has not in fact been done. It is difficult to persuade him that this is so when the Minister's final decision is taken after receiving a report on the case (which is not available to the parties) from an inspector appointed by the Minister. The Federation therefore suggests that, in order to satisfy all parties that enquiries are conduoted impartially, the inspectors holding tbe enquiries should not be in the employment of the Minister ooncerned but should be appointed by some completely independent person or body such as the Lord Chancellor's Department. There would then be no suspicion that the inspector ascertaining tbe facts in any case and reporting on them to the Minister was, in so doing, influenced by the policy of the Department.

It might also be advisable, in the interests of justice, that either party should have the right to request that evidence at enquiries be taken on oath.

8. The Federation's suggestions for eliminating delay in reaching final decisions are incorporated in the three following sections which contain observations on—

(i) procedures relating to appeals against planning decisions ;

(ii) objections to development plans, and

(iii) objections to compulsory purchase orders.

(i) Planning Decisions

9. Planning permission is required for practically all types of private development including the alteration of existing buildings as well as new building. It is most important to the private developer to know without delay whether he is to be permitted to carry out any particular type of development. Under the present procedure delays which are not only a cause of annoyance but which may also cause substantial financial loss are too frequently encountered both at the application and at the appeals stages.

Application

10. The local planning authorities, to which applications for planning permission have to be made, are required in theory to advise the applicant of their decision within two months, but it is not unusual to find in practice that no decision is conveyed to the applicant within that period. The planning authority may ask for an extension of time for consideration of the application. Applicants who agree to this complain that the planning authority sometimes fails to give a decision within the extended period and asks for a second extension. Alternatively the planning authority may simply refrain from reaching a decision. If the applicant does not agree to an extension of time or if he receives neither an approval nor a rejection of the application, he has the right of appeal to the Minister. He is then in the awkward position of having no definite decision to appeal against and of being unaware of the planning authority's reasons for its attitude.

11. It is suggested that planning authorities should be obliged to give a decision within two months, except where the applicant has agreed to an extension of time, and that, if no decision is given within two months (or the agreed extended period) permission should be deemed to be granted for the development shown in the application.

Appeal

12. Where a planning authority refuses an application or grants it subject to conditions, the applicant may, within four weeks of notification of the decision, appeal to the Minister. After the Minister has received observations from the planning authority and, in some instances, counter-observations from the appellant, a local inquiry is usually held by a Ministry Inspector. This Inspector submits a report to the Minister who after consideration of it makes known his decision.

13. There is a considerable amount of dissatisfaction with the procedure at this stage and the Federation has previously submitted suggestions for its modification to the Ministry of Housing and Local Government. The main complaints are that: —

(i) There is often a considerable lapse of time between the submission of an appeal and the holding of an enquiry.

(ii) Objections to the proposed development may be made by other Government departments to the Minister direct. As they may not be represented at the enquiry, the appellant has no means of ascertaining or replying to such objections.

(iii) The Inspector's report is not published. The appellant has therefore no means of satisfying himself that the facts have been fully and properly presented to the Minister.

(iv) There may be considerable delay between the hearing and the notification by the Minister of his decision.

(v) In giving his decision the Minister has power to reverse, vary or attach conditions to a part of the original local planning authority's decision which was not the subject of the appeal. The appellant has no opportunity whatever to submit any representations on such reversal, variation or conditions.

14. The Federation desires to put forward the following suggestions on the above matters.

For the prevention of delays certain time limits should be introduced. For example, it should be laid down that an enquiry should be held within three months of the lodging of an appeal and the Minister's decision should be made known within two months of the enquiry. These periods should be extended only by agreement of the parties.

15. Under the procedure at present in force every appeal, whether it is in respect of the development of a large estate or the proposed use of a room in a dwelling house for business purposes, has to go to the Minister and undoubtedly the main cause of delay is the number of appeals which come before the Minister. The Federation suggests that some means of relieving the burden on the Minister should be evolved. It seems unnecessary for example, that appeals against refusal to permit minor changes in use or cases where there is disagreement as to whether the building of a single house in a green belt area can properly be considered as "infilling" should have to be dealt with by the Minister himself. The Federation suggests that, with the object of avoiding this overloading of the Minister, there might be established in each Region panels of experts prepared to give part-time service on appeals tribunals to which suitable cases might be referred. The Federation would not attempt to define the type of case which might appropriately be considered by such regional tribunals, but puts forward the suggestion for consideration. The appellant should have the right to elect whether to appeal to the regional tribunal or to the Minister, but it is felt that, if cases referred to regional tribunals obtained a prompt hearing and an early decision, many appellants would choose this procedure.

16. While it is true that each case must be decided upon its merits, the Federation feels that the number of appeals—and consequently the waiting time before hearings—would be reduced if information about previous decisions was made more readily available by the regular publications of bulletins of selected appeal decisions. The decisions would not create binding precedents but planning authorities might decide to approve certain applications which they would otherwise have turned down or granted conditionally if they considered, after comparing the facts with other similar cases, that it was likely that their decision would not be upheld on appeal. Similarly applicants refused planning permission or granted conditional approval might decide not to appeal if reference to the bulletin of selected decisions showed that they had little prospect of success.

17. Except where factors of national security are involved the views of other government departments in respect of any appeal should be made available to the parties and the department should be represented at the hearing and be open to cross-examination. Such views should not be communicated to the Minister privately.

18. The Inspector's report should in all cases be made available to the parties. This is not a reflection on the competence and reliability of the Inspectors, but is suggested as a means of assuring the parties that their case has been properly presented to the Minister.

19. Where the Minister in reaching a decision reverses or varies a part of the application which is not the subject of appeal the appellant should have an opportunity to object to this variation.

(ii) Development Plans

20. Planning authorities are required under Part II of the Town and Country Planning Act, 1947, to prepare and submit to the Minister for approval development plans of their area and to review these plans at intervals of five years after the plan is approved. There has been considerable delay in obtaining the Minister's approval of these plans with or without amendment and there are stances where plans submitted over five years ago have not yet been approved. he effect of such delays can be serious. With the passage of time it may be at a type of development which appeared to be appropriate to a particular ction of the area covered by the plan may no longer be suitable and that nother type of development could be permitted without detriment to the rea as a whole. A housebuilder who bought land for development prior to

the submission of the plan may find that the land concerned has been sterilised by some provision in the plan. Although planning authorities do have a limited discretion to grant planning permission to applications which are not in accordance with a development plan, any alteration of any significance has to be referred to the Minister.

21. In cases where the Minister's approval of a development plan appears likely to be delayed for an indefinite period, the intending developer will probably submit an application for consent to develop. The planning authority may either approve it and refer to the Ministry for confirmation or may refuse permission, in which case the appellant may appeal. Failure to reach a reasonably prompt decision on a development plan consequently results in an increase in the number of individual cases referred to the Ministry and must add to the delay in hearing appeals generally.

22. While it would be unreasonable to require the Minister to approve a development plan within a few weeks of its submission—especially as the number of objections to such plans are usually considerable—it is suggested that it should be possible for a decision on a plan to be reached within twelve months from its submission in all save the most exceptional cases.

23. When a development plan is submitted, it is possible for objectors to lodge objections to the plan as submitted and a public enquiry into them is held. The Minister may, however, in approving the plan amend it in any way he thinks appropriate, and private developers may thus find their interests affected in a way not envisaged in the original plan without being afforded any opportunity to lodge objections to the Minister's amendments. It is felt that there should be some provision for those who consider their interests to have been adversely affected by ministerial amendments to a plan to have their objections heard. (An additional argument in favour of quicker approval of development plans is that the longer the time taken by the Minister to reach a decision on a plan, the more likely it is that some amendment to the plan may appear to him to be desirable.)

24. The Minister also has power to require that applications even though they are in accordance with a development plan should be referred to him for decision and he may decide against the development. There is no appeal against such a decision and it is suggested that any person who wishes to carry out a development which is in accordance with the development plan for the area and who is refused permission to do so by the Minister should have a right to have his objections heard at an enquiry.

(iii) Compulsory Purchase

25. There are two main reasons for the frequent complaints about compulsory purchase procedure. First, the compensation paid in cases of compulsory purchase frequently bears no relation to the market value of the land, and some of the appeals against compulsory purchase orders are a direct consequence of the failure to provide adequate compensation. A house-builder who is served with a compulsory purchase order on land which he is holding for development anticipates that the compensation he will receive will not be sufficient to enable him to purchase a similar area of land and indeed may not be sufficient to reimburse him for expenditure already incurred on the land in question. Consequently, although the land may be required for some very good purpose and other land suitable for housing is in the market, the owner may find himself impelled to appeal against the order in the hope of minimising his financial loss.

26. By so doing he is contributing to the second main cause for complaint against compulsory purchase, namely, the long delay which can occur between the first intimation of the intention of the authority to acquire the land and the final confirmation or otherwise of the order. So long as land is threatened with compulsory purchase the owner is unable either to develop it or to sell it. Delays in reaching a decision may well cause him serious financial embarrassment.

27. To reduce such delays it is suggested—

(*a*) that a definite period, say three weeks, be allowed for appeals to be lodged after notification of the making of the order ;

(*b*) that consideration should be given to fixing a period within which any enquiries into objections should normally be held. (The Federation realises that it may not be an easy matter to provide a time limit in all cases in view of the complexities involved.)

(*c*) that the decision whether or not to confirm the order should be given within three months of the enquiry. If no decision has been made within that period the order should be considered to be of no effect.

Recommendations

1. Inspectors conducting enquiries should be appointed by some independent person or body such as the Lord Chancellor's Department. (Paragraph 7.)

2. Either party should have the right to request that evidence should be taken on oath. (Paragraph 7.)

3. Planning authorities should reply to applications within two months of receipt of the application. If no decision is given within that time permission should be deemed to be granted for the development shown in the application. (Paragraph 11.)

4. Where an appeal has been lodged the enquiry should be held within three months and the Minister's decision should be made within two months of the enquiry. (Paragraph 14.)

5. To reduce the number of appeal cases going to the Minister for decision, consideration should be given to the establishment of regional tribunals to which minor cases might be referred on appeal. (Paragraph 15.)

6. Bulletins of selected appeal decisions should be published regularly. (Paragraph 16.)

7. Government Departments expressing views on a case which has gone to appeal should normally be represented at the enquiry hearing and should be open to cross-examination by the parties. (Paragraph 17.)

8. The inspector's report should be made available to the parties. (Paragraph 18.)

9. If the Minister in reaching a decision reverses, varies or attaches conditions to a part of the application which is not the subject of appeal the appellant should have an opportunity to object to this variation. (Paragraph 19.)

10. Provision should be made for the lodging and hearing of objections to any variations to a development plan proposed by the Minister. (Paragraph 23.)

11. Any person wishing to carry out development in accordance with the development plan and refused permission to do so by the Minister should have the right to have his objections heard at an enquiry. (Paragraph 24.)

12. A period of three weeks should be allowed after the notification of the making of a compulsory purchase order for appeals to be lodged. (Paragraph 27.)

13. There should be a fixed period within which enquiries against objections to a compulsory order should be held. (Paragraph 27.)

14. A decision whether or not to confirm a compulsory purchase order should be given within three months of the enquiry. If no decision has been made within that period the order should be of no effect. (Paragraph 27.)

Food Manufacturers' Federation

PUBLIC INQUIRIES INTO AGRICULTURAL MARKETING SCHEMES

1. This Federation is concerned that there is no provision under the Agricultural Marketing Acts or the Agricultural Marketing (Public Inquiry) Rules 1949, enabling publication of the findings of independent Commissioners appointed to hold inquiries into proposed agricultural marketing schemes.

2. It is submitted that an independent Commissioner's findings should be published, together with the reasons which have led to his findings on the evidence he has heard from promoters of and objectors to a proposed marketing scheme, for the following reasons:—

(*a*) Marketing schemes are of vital concern not only to their promoters (the National Farmers' Unions) but to the consumers, distributors and manufacturers of the product or products which the schemes embrace. This is evidenced by the current Public Inquiry into a proposed Egg Marketing Scheme, against which more than 700 objections have been lodged.

It should be emphasised that Statutory Marketing Boards, which are responsible for the operation of marketing schemes, are mostly producer trading monopolies which have power to regulate prices and supplies for products irrespective of market conditions, in order to guarantee returns to producers. In many cases this means that consumers have to pay higher prices for the product and food manufacturers are unable to purchase the raw material direct from producers at economic prices, so that the consumer ultimately pays higher prices for some manufactured foods.

(*b*) If a Commissioner's findings are not published (which is the position under the existing Law) none of the interests vitally affected, whether producers or consumers, can possibly know whether or not the Ministers concerned ultimately act on the Commissioner's findings in deciding whether or not to proceed in laying a draft scheme before Parliament. This seems to us to be contrary to basic principles of justice and democratic procedure. Should the Ministers decide not to accept the independent Commissioner's findings it would appear to us that they should at least explain to Parliament the reasons for the rejection of those findings.

(*c*) An independent Commissioner appointed to hold such inquiries is normally a senior Counsel whose legal training and ability to sift evidence should enable him to reach conclusions which are worthy of publication.

3. Attached to this memorandum is a copy of the Agricultural Marketing (Public Inquiry) Rules 1949, and of Section 1 of the Agricultural Marketing Act, 1931,(1) which authorises the Ministers to cause public inquiries into proposed marketing schemes to be held in certain circumstances.

4. We would be pleased to send one or more representatives from this Federation to give oral evidence in support of the points made in this memorandum.

Incorporated Society of Auctioneers and Landed Property Agents

The Council of The Incorporated Society of Auctioneers and Landed Property Agents have the honour to submit their observations on the Committee's terms of reference. The Society is a professional body of some 5,000 members of the Estate profession, a large proportion of whom have particular experience of a number of Administrative Tribunals and Inquiries.

(1) Not printed here.

ADMINISTRATIVE TRIBUNALS

The first part of the Committee's terms of reference which deals with Administrative Tribunals is of great interest to members of the Society. It is assumed that the Committee's terms of reference envisage inquiry into the working of the Lands Tribunal, Rent Tribunals, and Agricultural Land Tribunals. Although members of the Society, in the course of their professional work, are also concerned with other Administrative Tribunals (such as the General Claims Tribunal), the Society wishes to confine its evidence to those three Tribunals of which many members of the Society have direct experience.

1. The Lands Tribunal

It is the experience of members of the Society that the Lands Tribunal is well adapted by its constitution and procedure to cope with matters which fall within its own specialized sphere. The high standing in which the Tribunal is held by the profession is a clear reflection of the efficient way in which justice is administered by the Tribunal. The Society has no criticism to make of the present constitution or working of the Lands Tribunal.

2. Rent Tribunals

In the Society's view, the present working of Rent Tribunals has given rise to particular dissatisfaction, largely because of the methods by which their decisions are arrived at and the inability to question these decisions by means of appeal to some superior Tribunal. The lack of a clearly laid down policy which Rent Tribunals should follow and the matters to which they are to have regard accounts for the marked absence of uniformity in the decisions of Tribunals. This absence of uniformity in decisions of Tribunals which exercise an original jurisdiction is due partly to the different approaches by Tribunals to questions submitted for their determination and partly to the absence of machinery to enable decisions of Tribunals to be reviewed or set aside by a Court to which an appeal can be made.

The Society suggests that Rent Tribunals should be required to give reasons for their decisions and considers that a right of appeal on points of law to the Court of Appeal is desirable and would further the ends of justice.

The Constitution of Rent Tribunals is, in the opinion of the Society, far from satisfactory. At present, professional qualifications are not required from persons appointed as Chairmen of Rent Tribunals, although many Chairmen are, in fact, so qualified. The Society suggests that the Chairmen of Rent Tribunals should have legal or other appropriate professional qualifications.

3. Agricultural Land Tribunals

The changes brought about by the Agriculture (Miscellaneous Provisions) Act, 1954, for example those dealing with such important matters as the right to refer questions of law to the High Court for decision, have to a very great extent improved the working of Agricultural Land Tribunals. The Society has no criticism to make of the constitution or working of these Tribunals.

ADMINISTRATIVE PROCEDURES

The second part of the Committee's terms of reference, namely that dealing with administrative procedures which include an inquiry or hearing is of particular interest to the Society whose members are concerned with such important matters as inquiries held in connection with planning appeals and inquiries held in connection with compulsory purchase orders. It seems clear that the purpose of holding a public inquiry is for the further and better information of the Minister before he carries out his administrative functions of making a final decision. "That decision", to borrow Lord Greene's words, in the case of *B. Johnson & Co. (Builders) Ltd.* v. *Minister of Health* (*1947*) *2 ALL E.R. 395* "must be an administrative decision—guided by his (the Minister's) view as to the policy which, in the circumstances, he ought to pursue". The Society feels that while the final decision must rest with the Minister who is answerable, in the last analysis, to Parliament, the whole of the procedure leading up to it should be improved.

(a) *Inspectors*

An Inquiry or hearing is generally conducted by an officer of the Ministry concerned in making the final decision. It has been said that the appointment of officials as inspectors of public inquiries is justified on the ground that persons who are familiar with the technique of administration are often necessary if the work of public inquiries is to be effectively carried out. Although there is much to be said for this argument, yet it is felt by members of the Society that the appointment of persons not in Government service to act as inspectors of public inquiries would have the effect of removing any feeling of bias which may exist in the mind of an appellant, particularly where the Minister's decision goes against him, and of strengthening public confidence in the fair and efficient manner in which public inquiries are conducted.

(b) *Evidence at Inquiries by Departmental witnesses*

The Society considers that the view of other Government Departments which might be relevant factors in arriving at a decision, should be tendered in evidence at the inquiry and not, as at present, communicated to the Minister either before or after the inquiry. An appellant at the inquiry should have the right to test, by cross-examination, the views put forward by other Government Departments.

(c) *Inspectors' Reports*

Inspectors' reports of inquiries held by the Ministry of Housing and Local Government are not published. The failure to publish the inspectors' reports is considered to be one of the greatest defects in the present administrative procedure. It is no more than equitable that where a citizen's rights and interests are at stake, he should have the right of discovery in respect of any information relating to the subject-matter of the decision which may come into the Minister's possession. It is perhaps fitting to mention that the Donoughmore Committee on Ministers' Powers reported, as long ago as 1932, in favour of the publication of inspectors' reports and that reports of this kind are published by the Minister of Education. In the Society's view, publication to the parties of the inspectors' reports including their findings of fact and their recommendations, is desirable. If the Minister's final decision differs from the recommendations made by the inspector in his report, the Minister's reasons for not accepting the recommendations should also be published.

CONCLUSION

The Council of the Society hope that the views expressed in this memorandum will be of some assistance to the Committee on Administrative Tribunals and Inquiries. The Society will be pleased to supplement its observations by oral evidence if required.

Joint Editorial Committee of the Newspaper Society and The Guild of British Newspaper Editors

1. The Joint Editorial Committee of the Newspaper Society and the Guild represents the proprietors and editors of Provincial morning and evening newspapers and of Provincial and Suburban weekly newspapers in England, Wales and Northern Ireland.

2. The interest of the Provincial and Suburban press in the matters under consideration by the Committee on Administrative Tribunals and Enquiries is that in relation to such matters it is the informant and so in effect the representative of the public.

3. The majority of administrative tribunals and enquiries determine the rights of parties under acts of Parliament or adjudicate upon the rights of a private individual as against a local authority, statutory corporation or a government department.

4. The Joint Editorial Committee does not propose to comment on the powers conferred on these bodies beyond observing that only too often the public body setting up the tribunal is both an interested party in the cause and the judge therein, a principle which is generally repugnant to British justice.

5. In the majority of cases, the meetings of such tribunals are held in private. When this is so and a public body is both an interested party and the judge, the Joint Editorial Committee is bound to reflect the views of its members throughout the country that there is a genuine and growing feeling of public alarm in that apparently a system of secret tribunals is growing up in this country, outside the jurisdiction of the ordinary courts of law, reaching decisions affecting intimately the rights of the private citizen and of business communities in town and country.

6. Very seldom indeed in an individual case is this uneasiness warranted, but the very fact that proceedings are secret gives rise to rumour and suspicion which can only be dispelled by an independent news report.

7. Sometimes an attempt is made to inform the public by means of a Press release after the hearing. The public reaction is to look with suspicion upon such official documents as being ex parte and—rightly or wrongly—as telling the public only what the Tribunal wishes it to know.

8. The Joint Editorial Committee submits that the only proper way of dealing with these questions is to follow the legal maxim that justice must not only be done but must be seen to be done.

9. It may be argued that many of the matters dealt with by these tribunals involve the private and personal affairs of individuals and so are much better dealt with in private.

10. The answer to this contention is that if legislation had not created this machinery of administrative tribunals and enquiries to handle these questions, often involving state interference with the rights and interests of the citizen, those matters must have been determined by the courts of justice which sit in public with all attendant publicity.

11. Members of the proprietors' and editors' organisations have noted a wide variation in practice throughout the country. Some tribunals are closed: some are closed or open according to where they happen to be held: while some tribunals open to the public and press detract from the practical value of this procedure by omitting to give any form of public notification of the hearing.

12. Carrying through the principles of this statement to their logical conclusion, the Joint Editorial Committee represents:—

(*a*) that all such administrative tribunals and enquiries should be as open to the press and to the public as are courts of law, subject only to the extremely limited right of exclusion which can be exercised by judges and magistrates when otherwise the cause of justice cannot be served: and

(*b*) that to enable the press to discharge its duty of informing the public on important matters dealt with by these administrative tribunals and enquiries the convenors of the hearings should give notice of the date and time and place of the hearing to the puhlic and to territorial and local newspapers.

Mill Hill Preservation Society

The Mill Hill Preservation Society is interested in the procedure for the granting of permission to develop land and with the inquiries held by the Minister of Housing and Local Government under the Town and Country Planning Act, 1947.

The Society considers that for the most part this procedure works fairly and efficiently. It believes, however, that planning is not the concern solely of the developer, the local planning authority and the Minister. The question at a planning inquiry is not one of right against wrong, but of which policy is the better. To reach a decision on that policy the views of neighbours and of preservation societies may be relevant. The Society recognises that the local planning authority, an elected body, cannot be expected to hold a referendum on each particular case. It recognises that information is provided by the Planning Register, and by the agenda and reports of committees of the local council when

they are not merely recording decisions taken. But in the following two cases it considers that the public should have a better opportunity both of obtaining information and expressing its views.

1. When the local planning authority proposes to grant permission for development contrary to an agreed Development Plan.

This is the legal position.

By Town and Country Planning Act, 1947, Section 14 (1) the local planning authority in dealing with applications for planning permission shall have regard to the provisions of the Development Plan, so far as material thereto, and to any other material considerations.

S. 14 (3) Provision may be made by a development order for regulating the manner in which applications for permission to develop land are to be dealt with by the local planning authority and in particular

S. 14 (3) (*b*) for authorising the local planning authority in such cases and subject to such conditions as may be prescribed by the order, or by directions given by the Minister thereunder, to grant permission for development which does not accord with the Development Plan.

By Town and Country Planning General Development Order, 1950, article 8.

The local planning authority may grant permission for development which is contrary to the development plan in such cases and subject to such conditions as may be prescribed by directions from the Minister.

By Town and Country Planning (Development Plans) Direction, 1954.

(1) The Minister directs that the local planning authority may grant permission for development which is contrary to the Development Plan in any case where in their opinion the development would neither involve a substantial departure from the provisions of the plan nor injuriously affect the amenity of adjoining land.

(2) (i) In any other case, before granting permission for development contrary to the plan, the local planning authority shall send to the Minister a copy of the application made to them and of any plans and drawings which accompanied it, together with a statement of the reasons for which they desire to grant the permission and of the conditions, if which they propose to impose, and shall not grant permission for that development until the expiration of 21 days (or such shorter period as he may in any particular case appoint) from the date on which such copy is received by the Minister.

(2) (ii) Failing any direction from the Minister within the said period the local planning authority shall be authorised to grant permission for that development at the expiration of that period.

The Mill Hill Preservation Socicty is concerned with the case where the local planning authority proposes to grant permission for development which involves a departure from the agreed plan. The importance of the Development Plan is well brought out by the Minister in Ministry of Housing and Local Government Circular No. 45/54, dated 25th June, 1954.

Para. 6 of the Circular points out that the Minister is entrusting very wide discretion to planning authorities. In particular he would like to stress certain points:—

> " Development plans are of importance to a very wide range of interests and in the public mind an authority's planning administration is likely to be judged on the degree of significance which is attached to the approved plan. It would, therefore, seem to the Minister to be a cardinal mistake if in availing themselves of the Direction authorities showed any tendency to minimise the importance of the plan in favour of short-term considerations and to grant permission purely on the basis of a narrow interpretation of " substantial departure " or of " the amenity of adjoining land ". In particular, it must be recognised that people who accepted the provisions of the plan as submitted would often regard as a substantial departure any permission

which prejudiced their position under the plan as a whole—for example, if it were proposed to grant permission to develop for housing, land which the plan allocated for allotments."

As the Development Plan is so important, the Society considers that all whose position may be affected by a departure from it should be informed and should have an opportunity of making representations to the Minister. If the proposal for development had been in the Development Plan, they could have learnt of it in due time and objected to it. If the proposal is made contrary to the approved plan, they should have a similar opportunity of objecting to what is, ex hypothesi, a "departure" from the plan.

The procedure in two similar cases is relevant:—

(1) Procedure for dealing with objections to Development Plans.

Town and Country Planning (Development Plans) Regulations 1948. No. 17 (Local inquiries).

After the Development Plan has been submitted, the Minister shall take into consideration the Development Plan and any objections or representations received by him within the specified period (which was 6 weeks: cf. No. 2) and shall decide whether or not to cause a public local inquiry to be held into the objections or representations at which any interested persons may be heard. If the Minister decides to dispense with an inquiry, he shall, before approving the Development Plan, afford to any person who has duly made an objection and whose objection has not been met or withdrawn an opportunity of appearing before him and being heard by a person appointed by him for the purpose; and if such a hearing is arranged the Minister shall at the same time afford to the local planning authority and such other persons as he deems expedient an opportunity of appearing and being heard on the same occasion.

(2) T.C.P.A. 1947. S. 21.

Section 21 (1) gives the local planning authority power to revoke or modify planning permission, provided this is confirmed by the Minister.

Section 21 (2). Where the local planning authority submit an order to the Minister for confirmation, the local planning authority shall serve notice on the owner and on the occupier, and on any other person who in their opinion will be affected by the order; and if within such period as may be prescribed in that behalf in the notice (not being less than 28 days from the service thereof) any person on whom the notice is served so requires, the Minister shall before confirming the order, afford to him, and to the local planning authority, an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.

The Mill Hill Preservation Society considers that the circumstances dealt with in the two sections cited above are comparable to the case where a substantial departure from the Development Plan is suggested. Accordingly it proposes:—

Where a local planning authority wishes to grant permission for development which is a departure from the agreed plan—

(1) *The Local Planning authority shall give notice by advertisement in each of two successive weeks in the local newspapers circulating in the locality in which the land in question is situated.*

(2) *The Local Planning authority shall serve notice on the owner and on the occupier and on any person who in their opinion will be affected by the order, and on any society which in their opinion might wish to object to it.*

(3) *The Minister shall, before authorising the grant of such permission, afford to any person or society that has duly made a proper objection and whose objection has not been met or withdrawn an*

opportunity of appearing before and being heard by a person appointed by him for the purpose. If such a hearing is arranged, the Minister shall at the same time afford to the local planning authority and such other persons as he deems expedient an opportunity of appearing and being heard on the same occasion.

2. Where the Minister decides to hold a public inquiry either under S. 15 or S. 16 of T.C.P.A. 1947.

S. 15 By S. 15 of T.C.P.A. 1947 the Minister may give directions to a local planning authority that an application for permission to develop land shall be referred to the Minister instead of being dealt with by the Local Planning authority. In such a case S. 15 (2) provides that, if either the applicant or the local planning authority so desire, the Minister shall afford to each of them an opportunity of appearing before and being heard by a person appointed by the Minister for the purpose.

S. 16 By S. 16 of T.C.P.A. 1947, if the local planning authority refuse permission to develop land, then, if the applicant is aggrieved by their decision, he may by notice served within the time not being less than 28 days from the receipt of the notification of their decision, appeal to the Minister.

The Society considers that where the Minister decides to hold a public inquiry as a result of either of the above cases, due notice to the public should be given. In practice this is often done, but there is no fixed rule. Similarly although the Inspector usually imposes no restrictions at inquiries, the status of parties other than the applicant and the local planning authority is by no means clear. In a case in 1955 the local planning authority had been prepared to grant permission to develop land in the Green Belt. The Minister had caused an inquiry to be held under S. 15 of the Act, and at the inquiry the real objector was the Mill Hill Preservation Society, although officially it had no status.

Accordingly the Mill Hill Preservation Society proposes that, where the Minister decides to hold an inquiry, the three recommendations (listed above) should apply. This will ensure that interested parties will receive due notice, and will have a right to be heard at the inquiry.

Summary

The purpose of the Society's proposals is to ensure that before a departure from an approved development plan is sanctioned, interested persons and societies shall be afforded an opportunity of stating their objections to a person appointed by the Minister.

The Society would be willing to give oral evidence in support of its proposals, if so required.

National and Local Government Officers Association

1. COMPENSATION APPEAL TRIBUNALS

(1) On these Tribunals two lay members sit with a legally qualified Chairman. The Tribunals are established under and deal with appeals arising out of—

(*a*) The Local Government (Compensation) Regulations, 1948.

(*b*) The National Health Service (Transfer of Officers and Compensation) Regulations, 1948.

(*c*) The National Insurance (Compensation) Regulations, 1948.

(*d*) The National Assistance (Compensation) Regulations, 1948.

(*e*) The Town and Country Planning (Transfer of Property and Officers and Compensation to Officers) Regulations, 1948.

(*f*) The Gas (Staff Compensation) Regulations, 1949.

(*g*) The Electricity (Staff Compensation) Regulations, 1949.

(*h*) The Fire Services (Compensation) Regulations, 1948.

(*i*) The River Boards (Compensation) Regulations, 1950.

(*j*) The British Transport Commission (Compensation to Employees) Regulations, 1953.

(*k*) The Justices of the Peace Act, 1949 (Compensation) Regulations, 1954.

(2) At the time the new compensation code incorporated in these various regulations was under consideration NALGO was consulted and representations on the draft regulations were submitted by the Association to the appropriate Government Departments. In particular, NALGO contended that there should be a right of appeal from a decision of a Compensation Appeal Tribunal to some central authority. It was apprehended that in the absence of such a right of appeal different decisions might be given by various Tribunals on identical questions, thus giving rise to anomalies.

(3) The arguments put forward by the Association were not accepted and no provision was made for a right of appeal from a decision of a Compensation Appeal Tribunal. After the various regulations had come into force it did transpire that in a number of cases in which NALGO was concerned different decisions were given by different Tribunals on identical questions, thus giving rise to anomalies.

(4) During the debate on the South Shields Extension Bill at the Report Stage in the House of Commons on the 28th June, 1950, Mr. Geoffrey Hutchinson, Q.C., M.P. said (Hansard, 28.5.50, column 2377):—

> "The 1948 regulations set up tribunals by which questions arising out of these regulations are determined. There are different tribunals in different parts of the country. My information is that there are now something like 10 or 12 of these tribunals adjudicating upon these questions of compensation. They are all coming to different conclusions, and there is no body to co-ordinate these decisions and make them uniform. The result is that, within the scope of these regulations themselves we are getting a great variety of decisions on their application."

This statement was not challenged during the debate by the Parliamentary Secretary to the Ministry of Health, who was the leading Government spokesman.

(5) Moreover, NALGO was from time to time advised by Counsel that the decisions given by Tribunals in certain other cases were erroneous in point of law. In the absence of any right of appeal either to a central authority or the Courts the Association eventually decided that an attempt should be made to obtain an Order of Certiorari to quash one of these erroneous decisions. It was hoped that it could thus be established that the ancient remedy of certiorari was available if a decision of an administrative Tribunal could be said to have shown on its face that it was erroneous in point of law.

(6) In the case of *R. v. Northumberland Compensation Appeal Tribunal ex parte Shaw* the Court of Appeal held that certiorari to quash a decision of a statutory Tribunal lay not only where the Tribunal had exceeded its jurisdiction but also where an error of law appeared on the face of the record. Nevertheless, the Court made it clear that the Writ of Certiorari could not be used to provide a right of appeal where that right did not exist. Morris L.J. (1952 1 A.E.R. at page 133) said:—

> "It is plain that certiorari will not issue as a cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for rehearing of the issue raised in the proceedings."

(7) In *R. v. London Quarter Sessions* (1956 1 A.E.R. at page 677) Morris L.J. also said—"I respectfully agree with what Lord Goddard, C.J. said in his judgment:—

> "It has been pointed out over and over again that certiorari is a very special remedy. People cannot get certiorari merely as a matter of appeal. It is not a matter of appeal. If they can show that some requisite imposed by

law has not been fulfilled, it would be a ground for asking this court to quash the proceedings on the ground that quarter sessions had no jurisdiction to hear the case."

(8) In *R. v. Paddington North and St. Marylebone Rent Tribunal ex parte Perry* (1956 1 Q.B. at page 238) Lord Goddard, C.J. said:—

"For these reasons, whether the Tribunal came to a right conclusion or not, it is not a matter with which this Court can deal by certiorari. We are very often asked to grant certiorari on grounds which in truth are grounds of appeal. We cannot sit here as a Court of Appeal because Parliament has not chosen to give an appeal from the decision of these Tribunals. These Tribunals one may say are a law unto themselves. They do not sit as Courts. They are called Tribunals I suppose because in some respects they are the antithesis of Courts. They do not act on any settled principles. They do not have to take evidence according to law."

(9) In the case of *Healey v. Ministry of Health* (1954 3 A.E.R. at page 454) the Court refused to grant a declaration on the ground that by so doing the Court would be assuming an appellate jurisdiction to review a decision of the Minister of Health to whom the determination of the matter had been referred by statute.

(10) Denning L.J. said in Healey's case (1954 3 A.E.R. at page 452):—

"If the plaintiff had asked for a reasoned decision in this case raising a point of law I do not doubt that the Minister would have granted it and it could have been reviewed:",

Nevertheless, the same Lord Justice had said in Shaw's case (1952 1 A.E.R. at page 131):—

"I think the record must contain at least the document which initiates the proceedings, the pleadings, if any, and the adjudication, but not the evidence, nor the reasons, unless the Tribunal chooses to incorporate them. If the Tribunal does state its reasons and these reasons are wrong in law certiorari lies to quash the decision."

It is thus clear that it is for the administrative Tribunal to decide whether or not reasons are to be stated.

(11) It is within the Association's knowledge that one Compensation Appeal Tribunal refused to state the ground upon which its decision had been based, despite the fact that it had been requested to do this by the Ministry of Labour. In that case the Association had been advised by Counsel that the decision was erroneous in law. The Tribunal's refusal to state the reasons on which the decision was based precluded the appellant from obtaining an Order of Certiorari to quash the decision.

(12) Although injustice and inequity is much less likely to occur following the decision in Shaw's case, it is clear that the remedy of certiorari may not always be available and different decisions given by different Tribunals on identical questions can still give rise to anomalies.

(13) In the representations submitted by the Association on the new compensation code in 1948 reference was made—

(*a*) to section 10 of the Reinstatement in Civil Employment Act, 1944, giving a right of appeal from Reinstatement Committees to an umpire, and

(*b*) to regulation 15 of the National Insurance (Determination of Claims and Questions) Regulations, 1948, giving a right of appeal from a decision of a local Tribunal to a Commissioner.

(14) Under the provisions of regulation 15 of the National Insurance (Determination of Claims and Questions) Regulations, 1948, and the Amendment Regulations of 1955, if the decision of the local Tribunal is unanimous the claimant is not entitled to appeal to the Commissioner without leave unless his case is taken up by:

"an association of employed persons, or any other association which exists

to promote the interests and welfare of its members, where in either case—

(i) the claimant at the time of the appeal is a member of the association and was so immediately before the question at issue arose; or

(ii) the question at issue relates to the right to benefit by virtue of the insurance of a deceased person and that person was a member of the association at the time of his death:"

This restriction provides a safeguard against frivolous appeals.

(15) Under regulation 15 of the National Insurance (Determination of Claims and Questions) Regulations, 1948, an appeal can lie to the Commissioner relating to a comparatively small amount. An appeal under the compensation regulations may relate to a substantial annual sum that could be payable for thirty years or more, thus involving a very considerable capitalised figure. It is submitted that there should be some right of appeal to a central authority or to the High Court on a point of law arising out of a decision of a Compensation Appeal Tribunal. There are cases in which the Association has been advised by Counsel that the decision of the Tribunal would have been properly appealable if any right of appeal existed whereas the remedy of certiorari could not be exercisable.

(16) In Shaw's case Lord Justice Singleton said (1952 1 A.E.R. at page 127):—

"Much time has been expended in recent years in considering whether in particular circumstances certiorari, or prohibition, will lie. A great deal of it could be saved. The regulations under the National Health Service Act, 1946, are of great complexity. The interpretation of them is left to the tribunal; there is no provision for an appeal to the Courts. That position arises frequently nowadays. I most earnestly wish that in such cases, where difficult questions of law, and of interpretation, must arise, that there should be given some right of appeal. Perhaps the most convenient form is that adopted in s. 37 of the National Insurance (Industrial Injuries) Act, 1946, under which any question of law arising in connection with the determination of certain questions may, if the Minister thinks fit, be referred to the decision of the High Court, and any person aggrieved by the decision of the Minister on any question of law not so referred may appeal from that decision to the High Court. And there is provision in sub-s. (5) that the decision of the High Court shall be final, a provision which may be thought desirable in such cases. After all, it is the function of the courts to determine questions of law. Tribunals are sometimes given an unduly difficult task. There must be a feeling of dissatisfaction if it is recognised that a decision of a tribunal is wrong in law and yet there is no power to correct it—in other words, if there is no right to obtain the opinion of the court. I am satisfied that the course I have suggested would result in a saving of time, and of expense, and would be for the public good."

(17) In *R. v. Paddington North and St. Marylebone Rent Tribunal* (1956 1 Q.B. at page 237) Lord Goddard, C.J. said:—

"Where the Tribunal has jurisdiction and in the exercise of that jurisdiction make what a party considers an error that is not a ground for certiorari; that is a ground of appeal. I have often thought that in this class of case, though I dare say there are good grounds of policy the other way it would have been a good thing if Parliament had provided for an appeal, but they have not. The only thing that can be done is to apply for certiorari . . . "

(18) It is within the knowledge of this Association that some lay members of Compensation Appeal Tribunals have admitted that they were unable to understand the very complex regulations. It is submitted that in these circumstances there is ample justification for providing a right of appeal against a decision of such a Tribunal either to the Courts or to a legally qualified and experienced umpire or Commissioner.

(19) While the number of appeals now arising under the Compensation Regulations is small it would not be true to say that the question of a further right of appeal under the Regulations is no longer important. The 1948 code is considered officially to be the up to date code suitable for general application.

During the debate on the South Shields Extension Bill at the Report Stage the Chairman of the Private Bill Committee which considered the South Shields Bill said (Hansard, 28.5.50, at column 2369):—

> "The plain issue was whether the 1933 code which was built up—let us be quite fair to the National Association of Local Government Officers—over a long period, and was enacted upon the floor of the House in 1933 after a very long debate, should be removed and whether the Minister should have his way in introducing the 1948 regulations, which, if I may say with very great respect, had never been fully debated on the floor of the House . . . The Minister seeks to introduce the 1948 code on the grounds that the compensation clauses in the 1933 Act are not suitable for present-day conditions, that we have moved away from the conditions that prevailed in 1933, and that a new set of circumstances exists."

(20) The Government has made it known that proposals for the reorganisation of local government are under consideration. If legislation is introduced a large number of claims for compensation for loss of office or diminution of emoluments will almost inevitably arise.

(21) Attention is drawn to certain observations of Lord Goddard, C.J. in the Paddington case (1956 1 Q.B. at page 235):—

> "These Tribunals are given wholly peculiar powers by Parliament because they are not bound to act upon evidence. They are not bound to act on any particular principles. All that has to be done, provided the property into which they are asked to enquire is within their jurisdiction, is to make such enquiries as they like. They can act on their own views, knowledge and opinions. Provided that appropriate notice has been given they do not have to hear evidence. The only thing that they must do is to give the tenant and the landlord an opportunity to lay their views before them. They need not even hear the landlord or the tenant unless they wish to come. If the landlord and tenant like to put forward their views in writing the Tribunal must consider them but they can act exactly as they like."

It appears that these observations are also applicable to Compensation Appeal Tribunals.

2. SUPERANNUATION APPEALS

(a) Local Government Service

(22) Section 35 of the Local Government Superannuation Act, 1937, enables an employee who is dissatisfied with a decision of a local authority concerning the employee's superannuation rights to refer the question for determination by the Minister. Under the provisions of the section:

> "the Minister may at any stage of the proceedings on the reference to him, and shall if so directed by the High Court, state in the form of a special case for the opinion of the High Court any question of law arising in those proceedings."

The value of this opportunity for employees to obtain a decision of the High Court is shown by the case of *Jobbins* v. *Middlesex County Council* (1948 2 A.E.R. page 610). In that case an employee, appearing in person, succeeded in establishing his claim in the face of the opposition of the Middlesex County Council. It is also clear from the decision in the case of *Walter* v. *Eton Rural District Council and Another* (1950 2 A.E.R. page 588) that such an employee will not be able to refer any question of law relating to his superannuation rights to the Court unless a case is stated under section 35 of the Act of 1937 before the Minister's decision on appeal has been given.

(23) It is submitted that it ought not to be necessary in order to safeguard completely the rights of an appellant for every appeal submitted to contain as a precautionary measure a request for a case to be stated to the High Court. Moreover, even if that was done the employee would have no remedy if the Minister's decision was given, even inadvertently, before a case had been stated. Some superannuation appeals are in the hands of the Ministry for more than

two years before a determination is given. It is therefore possible that the Department might overlook a request made for a case to be stated before any adverse decision was given.

(24) The Association maintains that there should be some agreed and established procedure with a view to ensuring that every appellant is given a reasonable opportunity to consider whether or not to apply for a case to be stated on a point of law before the Minister's decision has been given.

(25) No rules governing applications for a case to be stated under section 35 of the Act of 1937 have been made. In the absence of such rules it appears that the only procedure for ordering the Minister to state a case is by way of an application for an Order of Mandamus. It is understood that the Ministry of Housing and Local Government would be willing to approach the Lord Chancellor's Department with a view to the necessary rules being made for the purpose of section 35 of the Act of 1937.

(26) While no member of the Association can, at the present time, be said to be prejudiced, it is submitted that new rules should be made and an agreed and established procedure laid down.

(b) **National Health Service**

(27) Under the provisions of regulation 85 of the National Health Service (Superannuation) Regulations, 1955, any question arising under the regulations as to the rights or liabilities of an officer or retired officer has to be determined by the Minister of Health. There is no right to have a case stated to the High Court on a point of law. As a result, an officer employed in the Health Service who is dissatisfied with a decision of the Ministry of Health has to submit any appeal he may think fit to make against that decision to the same Government Department. This system has long given rise to dissatisfaction and representations have been made to the Ministry of Health on several occasions, without success, through the National Advisory Committee for Local Government Service of the Trade Union Congress.

(28) The unsuccessful application made to the High Court in Healey's case (1954 3 A.E.R. page 449) was an attempt to obtain a final determination on a question relating to the superannuation rights of an officer employed in the National Health Service through some appellate jurisdiction other than that operated by the Department that had given the decision in question.

(29) In the Paddington case (1956 1 Q.B. at page 237) Lord Goddard C.J. said:—

> "I pointed out the other day in a case that if certiorari is moved because of the bias of a justice the theory that lies behind that is that if a justice is biased he is, in effect, a judge in his own cause and as no-one can be a judge in his own cause certiorari will be granted because the justice had no jurisdiction as he was sitting in a matter in which he was interested."

(30) It is submitted that no matter how impartially the appeals machinery in the National Health Service (Superannuation) Regulations, 1955, may be operated by the Ministry of Health, dissatisfaction will inevitably arise if there is no right of appeal to some independent authority on a point of law from what is in effect an administrative decision of a Government Department.

National Association of Parish Councils

1. The tribunals which principally affect rural parishes are:—
   (*a*) Public local inquiries held by a County Council or the Minister of Housing and Local Government into Local Government boundaries.
   (*b*) Inquiries under the Town and Country Planning Acts.
   (*c*) Licensing Authorities under the Road Traffic Acts.
   (*d*) Inquiries into Compulsory Purchase Orders.
   (*e*) Inquiries into Loan Sanctions (e.g. for sewage works and water supply).

(*f*) Inquiries into Slum Clearance Orders.

(*g*) Inquiries into Boundaries of Electoral Divisions for local elections (Home Office).

While this memorandum is written chiefly with those seven classes in mind, it must not be supposed that it is concerned exclusively with them. The life of a parish may, for instance, be disturbed by licensing justices, or a Coast Protection Inquiry.

2. The Association believes that it is in principle right that any person who intends to disturb the life of a particular parish (i.e. the community of his neighbours) should be required to give notice of his intention to the Council of that parish, and that he should not be allowed to proceed with his application until he has certified that such notice has been given. The giving of a false certificate should be punishable but the notice itself need not be elaborate. Examples of such notices are given in Appendix A. In many cases they could be printed on a large postcard, or on a tear off attachment to the application form.

Procedure and Status

3. Whilst it is fully recognised that the entire responsibility for decision must be the Ministers', the Association considers that in cases other than those which are governed by serious questions of national security, administrative tribunals should on principle be required to sit in public, to hear in the presence of the parties all the evidence to be given by all the relevant interests (including other government departments) and to publish their advice to the appropriate Minister in reasoned form. Moreover, the Minister in every case should (subject again to security) be required to give his reasons for his decision.

4. The requirements set out above cannot be fully realised unless the officials who conduct such hearings are accorded an independence from public attack and hierarchical censure which will enable them to speak frankly to private citizens and Ministers of the Crown alike. Such officials ought to be independent and impartial. This means that their position and emoluments should be secure and that their public pronouncements should be protected against actions for defamation by a privilege similar to that accorded to judges.

In making these proposals the Association does not wish it to be understood that the present informality and cheapness of the proceedings should be sacrificed nor that inspectors should be precluded from having technical qualifications relevant to the issues at stake; indeed it lays special emphasis on the paramount importance (at least in rural areas) of administrative inquiries being cheap, informal and easy of access. The proposals are concerned solely with the personal independence of the inspector at and in connection with a hearing.

Security

5. The Crown must necessarily be able in the public interest to withhold information or confine the communication of it to confidential channels which may even be situated behind the back of the tribunal altogether. This is unavoidable but easily abused; there is an irresistible temptation for those who handle secret material to extend the area of secrecy beyond what is reasonable and at present no means exist for ascertaining whether reasonable limits have been reached. There ought to be some authority to which a claim of Crown Privilege can be referred even if that authority has itself to sit in secret and publish no reasons for its adjudications. The Security Services were recently investigated by a Committee of Privy Councillors; the Lords Justices of Appeal are customarily sworn of the Privy Council. Questions of Crown Privilege might with perfect safety be referred to a Privy Council Committee upon which those who have held high judicial office might predominate. The very existence of such a tribunal would probably reduce the number of cases of disputed Crown Privilege to very modest figures.

The Unity of the Crown

6. It is sometimes said that one Minister ought not to be required to give evidence at an inquiry held on behalf of another because such a requirement would contravene the principle of the unity of the Crown. The Association believes that if any such principle exists, the requirement is not a breach of it. The inquiry is held to ascertain facts upon which a Minister can base advice to the Crown in connection with his departmental responsibility: if another Minister has opinions upon the matter, those opinions are as much facts as local puhlic opinion or any other fact; if the Crown is one, its advisers are many and the subject who attends an inquiry to defend his interests is entitled (subject to security) to be in possession of all the facts.

The Effect on the Parish

7. A change resulting from an administrative decision may deeply affect and possibly revolutionise a long established way of life in a rural parish whilst seeming unimportant or conservative in the framework of large scale administration. Most such parishes are or consist of recognisable communities with a corporate opinion which in most cases is represented by the Parish Council. This corporate opinion is not always the same as that of the individual parishioners appearing before administrative tribunals and the members of Parish Councils are often in possession of other local information which is unknown to members and officials of other types of local authority.

8. It will accordingly be in the interests of justice as well as efficiency and humanity if Parish Councils are given the right to be represented at administrative tribunals in relation to matters affecting the parish.

Generally, notices of all relevant puhlic hearings or inquiries should be served on the parishes concerned; the parisbes should be entitled to be heard and to call witnesses; and the parishes should be informed of the Minister's decisions by the Minister in all cases.

Arrangements for Notice

9. At present such opportunities are often denied because the arrangements for giving notice of hearings to Parish Councils and Parish Meetings are frequently defective.

(*a*) In some cases, such as applications connected with 'bus services, the Parish Council is not entitled to notice and is not informed (save by chance) of the contents of the fortnightly "Notices of Proceedings" and, though a Parish Council will be heard in such matters by (and with) courtesy, its participation in these vital proceedings occurs haphazardly and by accident.

(*b*) In other cases (such as proposals for stopping up highways under Section 49 of the Town and Country Planning Act, 1947), the Parish Council is entitled to notice but the law is not apparently always obeyed.

10. In appendix B will be found an example of a defect in procedure which ought to be remedied in itself and which illustrates the main "Parish Problems" with which this paper deals.

A relatively small defect in the procedure for giving notice of modifications in a County Development plan may have serious repercussions in a small community and lead to injustices for which there is at present no redress.

11. The Association wishes to draw attention to a grave defect in the procedure on Compulsory Purchase Orders. At present the Minister gives his decision on printed form which either "confirms" or "does not confirm" the provisional er. So far as is known, no reasons are ever given. This contrasts most avourably with the Planning Section of the Ministry. The Minister's decision Planning Appeals is set out in great detail, clearly stating the issues at stake the Minister's reasons for his decisions. This method of giving decisions is aluable, since it not only sets out the case fairly, but the decisions act as ides in determining other cases.

APPENDIX A

Examples of Notices

1. *'Bus Services.* To the.....Parish Council. Take notice that it is intended within 21 days to apply to discontinue the 12 o'clock 'bus service through your parish. Particulars of the application and of the date of hearing may be obtained from.....

2. *Planning.* To the.....Parish Council. Take notice that it is intended to apply to.....which is the Local Planning Authority for planning permission to: erect a garage at Smith Street in your Parish. Particulars of the application may be obtained from the Local Planning Authority.

APPENDIX B

Note by M. S. Pease, Esq., on procedure in relation to County Development Plans

Under the Planning Act of 1947 a Draft County Development Plan is deposited for public inspection by all and sundry. Subsequently a Public Enquiry is held into the objections which have been lodged and finally the Minister confirms the Development Plan, *"with or without modifications"*. When a development plan is confirmed by the Minister *with modifications,* these alterations to the deposited plan, though small in relation to the whole County plan, may have the consequence of most injuriously affecting a particular property or group of properties or even a parish, e.g. by extending an aerodrome, or altering the boundary of an industrial zone, or re-aligning a road improvement. But the owners of such property or the Parish Council concerned had no reasonable means of knowing that such modifioations of the deposited plan were being considered. It is merely academic to suggest that every owner of property and every parish should be represented during the whole of an Enquiry lasting several weeks on the off-chance that some third party might propose a modification of the deposited plan which might have injurious effects. It should be added that there is no appeal against the Minister's confirmation, except on a point of law.

To remedy this defect in procedure, it is suggested that if the Minister decides to confirm a Development Plan *with modifications,* then he should re-deposit the modified plan for 28 days so as to give opportunity for objections to the modifications to be lodged. These objections should be heard and determined by the Minister before the Minister finally confirms the Plan.

National Council of Women of Great Britain

Preamble

The National Council of Women of Great Britain was founded in 1895 and became an Incorporated Association in 1951. It has 95 Branches and 87 National Affiliated Societies. The Objects of the Council include "the establishment of human rights for the people of the United Kingdom, and their civil, educational, moral and religious welfare; the promotion of such conditions of life as will assure for all persons opportunities for full and free development; to secure the removal of all disabilities of women, legal, economic or social, and to promote the effective participation of women in the life of the nation". The National Council of Women of Great Britain is affiliated to the International Council of Women, forming a link with National Councils of Women in other countries, and the International Council of Women has consultative status with the Economic and Social Council of the United Nations, and also consultative status with UNESCO.

The National Council of Women of Great Britain wishes to draw the attention of the Committee to the following Resolution, which was passed unanimously at its Annual Conference, held in October, 1955:

Compulsory Purchase and Delegated Legislation

"The National Council of Women in Conference assembled, welcomes the mention in the Queen's Speech, at the Opening of Parliament, of the intention to set up a Committee of Enquiry to consider practice and procedure in relation to administrative tribunals and quasi-judicial enquiries, including those concerning land, and urges Her Majesty's Government to consider the whole matter of Delegated and Sub-delegated Legislation, the method of informing the Public of any Orders or Regulations and the contents thereof, the Administrative Tribunals and the need for them to state the facts which they find and the decisions of law at which they arrive, the constitution of the membership of such Tribunals, and whether and to what extent and under what conditions appeals from the Ministers, their Delegates and the Tribunals should be subject to appeals to the Courts of Law."

In arriving at their decision to pass this Resolution, the National Council of Women had in mind that as the foundations of the basic liberties and rights have been laid over centuries and built up by Charters even as early as Saxon times, the growth of legislation by delegation, and the setting up of Tribunals which are not subject to the control of the Courts of Law, and from which there is no appeal, are to be deprecated. It regards all this as a serious infringement of the liberty and rights of the subject, and a very real danger to democratic government.

Furthermore, the dangers inherent in, and the injustices arising from the present procedure of Compulsory Purchase are matters which the National Council of Women views with considerable concern.

The National Council of Women therefore asks the Committee to consider the following Recommendations:—

Administrative Tribunals

It is recommended that procedure governing these Tribunals should be amended so as to conform more nearly to that obtaining in Courts of Law. It is urged that:—

(1) Evidence should be given on oath.

(2) The Chairman and/or the Clerk should be legally qualified.

(3) Persons whose cases are to be heard by a Tribunal should be entitled to be represented at the hearings.

(4) The decisions of these bodies should be subject to appeal to a Court of Law, on any point of law or question of fact.

(5) Tribunals should state their reasons for their decisions.

Compulsory Purchase

In so far as Procedure (as outlined in your terms of reference) relates to delay in implementing compulsory purchase orders, the National Council of Women views with alarm the consequent hardship caused to many innocent sufferers by orders being "held over" property and landowners for many years. It is recommended that the Authority should proceed to purchase without delay in order to prevent what, in many cases, might amount to ruin.

The National Council of Women, while accepting without question the need planning in a community so large as ours and with so little land, recommends there should be a body set up to whom aggrieved parties may appeal after Minister has confirmed an order, and recommends that consideration should iven to the question whether, and under what conditions, any aggrieved n may appeal, and to whom, from any order confirmed by the Minister; ternatively or in addition what other remedy he should have to obtain reason- compensation, if evidence can be brought to show good reason why the ster's decision should be reversed.

is desired also to draw attention to the possibility of a Government Depart-, which has compulsorily acquired land for a specific purpose, retaining it n it is no longer required for that purpose and subsequently transferring it to ther Government body as was the case with the Crichel Down Estate.

The powers which legislation has vested in various Ministers and which they are entitled to delegate and sub-delegate are of such magnitude that the ordinary citizen, who may become involved, is rendered almost defenceless against possible injury inflicted by the exercise of such powers.

A copy of the Speech by Mrs. Florence Earengey, B.A., J.P., proposing the Resolution on Compulsory Purchase and Delegated Legislation at the Annual Conference of the National Council of Women of Great Britain, on 20th October, 1955, is appended. (Not printed here.)

National Farmers' Union of Scotland

Introduction

1. The National Farmers' Union of Scotland is a voluntary organisation of Scottish farmers, including both tenants and owner occupiers of agricultural land. The constitution makes provision whereby managers of farms, farmers' families, and certain others, can be members but, generally speaking, the membership is confined to those actively engaged in farming. The organisation was founded in 1913 and the present membership of about 24,000 is estimated to represent about 80 per cent. of the bona fide practising farmers in Scotland. The Union is recognised by the Government and other organisations as the representative organisation of Scottish farmers.

The Land Court

2. The functions of the Scottish Land Court have been extended by successive Acts of Parliament until it now occupies an important place in the framework of Scottish agriculture. In particular, it acts as a court of appeal from certain decisions of Agricultural Executive Committees and as a tribunal to which matters may be referred which are not to be disposed of by agreement between parties or by arbitration. It is assumed, however, that the Land Court is outwith the terms of reference of the Committee on the grounds that it is a court of law.

Arbitration

3. The Committee will be aware of the tendency of recent agricultural legislation to encourage the reference of disputes within the farming sphere to arbitration rather than the ordinary courts of law. Section 74 of the Agricultural Holdings (Scotland) Act, 1949, indeed, provides in effect that, apart from some minor exceptions, all disputes between landlords and tenants of agricultural holdings shall be determined by arbitration. The Union agrees with the principle that arbitration should generally be the first resort on agricultural questions which cannot be settled by agreement. The disputes in which farmers are involved normally embrace points of a practical nature which can more appropriately be considered by an arbiter with a practical knowledge of the industry than by a court of law in the ordinary sense. Other advantages of arbitration are that the procedure is comparatively simple and informal which results in reduced costs. It is believed that the existing provisions for the reference of points of law to the courts are adequate, but the procedure in this regard could be improved if specific provision were made requiring arbiters to present proposed findings to the parties. The present practice is for arbiters to issue such proposed findings but, if an arbiter chooses not to do so, then the parties have no proper opportunity to require a stated case on a point of law to the courts because this cannot be done once the arbiter has issued his final award. At that stage the only remedy open to an aggrieved party is to seek reduction of the arbiter's award which is only possible on certain special grounds.

Agricultural Executive Committees

4. These committees play an important part in the administrative sphere of Scottish agriculture and exercise jurisdiction on various matters similar to that normally exercised by a court. The Union is of opinion that these committees have carried out their semi-judicial functions with remarkable fairness and success and no criticism is offered of the procedure adopted by the committees.

5. The Union would, however, suggest that the scope of the functions of the A.E.C.'s in the field of utilisation of land questions should be widened. It is suggested that where proposals for the use of farming land for planting by the Forestry Commission are under consideration the whole Agricultural Executive Committee and not simply the Chairman, as at present, should be consulted. It is felt that in this way more effective advice could be made available and the chairmen of A.E.C.'s would be absolved of the exclusive responsibility for advising on such questions which may relate to parts of their area not well known to them personally.

6. It is also believed that A.E.C.'s should he consulted whenever planning permission is sought for the use of agricultural land for non-agricultural purposes. This is already done, for example, in the case of local authority housing proposals, but consultation with the A.E.C. should be universal. This comment is without prejudice to the further observations on the subject of planning permission contained in paragraph 10.

Public Enquiries

7. The Union has, from time to time, been concerned with the experience of members in connection with local public enquiries arising out of proposals for compulsory acquisition of land for such purposes as local authority housing. The merits of the public enquiry system, which provides opportunity for interested parties to present their views, are fully appreciated, but it is considered that the present procedure operates very much to the disadvantage of the objector to a proposed compulsory purchase who is defending his private rights and who, in so far as his objection is successful, is also acting in the public interest.

8. The objector is at a disadvantage, in the first place, as regards expenses. The present position is that if the matter is pursued to the stage of a public enquiry then the Secretary of State has discretion to award expenses between parties. It has happened, however, that a proposal for compulsory purchase has been abandoned by the promoting authority before the stage of a public enquiry but after prospective objectors have incurred considerable expense in preparation of their cases. In these circumstances, it is understood that no award of expenses can be made. The Union has also had experience of the case where the public enquiry has been completed, the objector has been successful, which means that he has acted in the public interest, but his costs have not been fully reimbursed by the award of the Secretary of State. It is appreciated that recompense cannot be obtained for unreasonable expenses or for expenses incurred by frivolous objectors, but cases have occurred in which objectors who have acted reasonably have received no reimbursement, or the awards made have been entirely inadequate. It should be noted that the present practice is specially inequitable in its application to the farmer on a small scale who cannot contemplate the cost of expert assistance in defending his interest. It is accordingly submitted that the appropriate legislation should be amended to provide for adoption of the principle that proper expenses of reasonable objectors will be reimbursed in full by the promoting authority, including cases where no formal public enquiry is held. It is further submitted that provision should be made whereby unsuccessful proposals for compulsory purchase cannot be revived until a period of years has elapsed. At the moment a successful objector who has probably not been reimbursed for his outlays lives in fear of the proposal being revived. It is believed that these suggestions are fair and would engender a more careful attitude on the part of public authorities before the promotion of compulsory acquisition proposals.

9. The Union approves of the general practice of appointing persons of independent status to act as commissioners in connection with public enquiries. In certain cases, however, the views of objectors are required to he submitted at hearings conducted by officials of interested Government Departments and it is submitted that the principle of independence of the person hearing the views of parties should be universally applied.

10. Recent public enquiries into proposals for producer marketing schemes under the Agricultural Marketing Acts have led the Union to consider the propriety of public comment on the subject matter of an enquiry outwith the

proceedings of the enquiry itself. It is appreciated that a public enquiry differs in certain respects from a court of law; nevertheless, it is submitted that the commissioner at such an enquiry is performing a semi-judicial function and it is considered undesirable that he should be open to influence by public comment which is not subject to the procedure of the enquiry itself. It is, therefore, recommended that public comment on the subject matter of any public enquiry should be restricted to reporting the proceedings as long as the enquiry itself is in session.

Planning Permission

11. The Union wishes to draw the attention of the Committee to an anomaly in connection with the grant of planning permission which affects the farming interest. Under existing agricultural legislation, tenants of holdings have a substantial degree of security of tenure and, in general, a notice to quit served upon a tenant farmer will not be effective without the consent of the Secretary of State. This general rule, however, suffers exception in that Section 25 (2) (c) of the Agricultural Holdings (Scotland) Act, 1949, provides that a notice to quit will be effective without further procedure if it is given on the ground that the land is required for a use for which planning permission has been granted or is not required.

12. In the extreme case, planning permission can be obtained at the moment by a person who has currently no rights in the land involved and without the knowledge of the owner and tenant. That person can subsequently acquire the land and is then in a position to evict the farming tenant. Certainly it is submitted that planning authorities are not aware of the significance of the grant of planning permission in respect of agricultural land for normally their functions as planning authority do not affect the rights of tenants and are merely concerned with the use to which those having existing rights can put the land. The Union strongly recommends that in recognition of the significance of planning permission to a farming tenant, applications for such permission should be referred to the Secretary of State and full opportunity should be given for the views of parties, including the tenant, to be heard.

Special Powers of Public Authorities

13. The Union's experience with cases of acquisition of land by public authorities has emphasised that, under the present law, the owners of land are better able to defend their rights than are tenant farmers. Where the owner is unwilling to sell he is in a position to force a public enquiry in which case any tenant of the land has an opportunity to state his views. Where, however, the owner of a tenanted holding is a willing seller, or a seller on the basis that he is not prepared to face the expense of a public enquiry, the tenant has no proper opportunity of presenting his case for consideration by an independent body. In certain cases public authorities, having acquired land, have statutory powers to evict the farming tenants at negligible notice. The Union submit that the disadvantageous position of the tenant is completely unjustified and that he should be able to state his case to an independent tribunal.

Compensation on Compulsory Acquisition

14. In broad terms, the position regarding compensation on compulsory acquisition and similar cases is that, if agreement cannot be reached, then the matter is referred to an arbiter under the Acquisition of Land (Assessment of Compensation) Act, 1919. It is understood that the basis of valuation is existing use plus an element for development value, and provision is made for claims in respect of disturbance, severance, etc.

15. While the theoretical basis of these provisions is noted, it is the Union's experience that compensation granted to owners and tenants is generally inadequate and reflects a lack of appreciation of the effects of loss of land upon the possibility of continuing to operate the balance of the holding as an economic farming unit. The reduction of profitability of the farm is normally disproportionately large compared with the reduction of the acreage of the holding, and

the effects of severance and disturbance are under-estimated. The loss of land frequently means that the capital assets of buildings and machinery cannot be fully exploited while the rotation of crops or balance of stock can be seriously upset. The creation of awkwardly shaped fields on arable farms results, with modern implements, in inability to cultivate material parts of the land which remain to the holding.

General

16. Over the years there has been brought to the attention of the Union a large number of cases concerning the acquisition of farm land for other purposes such as housing, forestry, and industrial development, which have aroused a degree of ill-feeling and resentment which could at least have been considerably reduced if early and explicit notice of intention had been given to the owners and tenants involved. The difficulties of early notification by public bodies is appreciated, but it is believed that there is a sorry lack of appreciation by such bodies of the outlook of those who depend on the land for their livelihood and much could be done to improve the situation.

Officers' Association

28, Belgrave Square,
London, S.W.1.
23rd April, 1956.

J. Littlewood, Esq.,
Committee on Administrative Tribunals and Enquiries.

Dear Sir,

I am desired by the Council of the Officers' Association to represent to your Committee their views on certain procedures of the Pensions Appeal Tribunals, set up under the Pensions Appeal Tribunals Act, 1943. These representations are based on many years experience in assisting disabled ex-officers, or their widows, to present their cases before these Tribunals against decisions of the Ministry of Pensions (now the Ministry of Pensions and National Insurance) in regard to "Entitlement" appeals.

2. The points of procedure to which my Council wishes to invite the attention of your Committee fall generally into two main groups:—

(*a*) in regard to the appraisement by the Tribunal of specialist medical evidence presented on behalf of the appellant.

(*b*) in regard to certain points of legal procedure which in the view of the Association's legal advisers at present tend to operate to the disadvantage of the appellant.

My Council's submissions in respect of these matters are set out below.

Appraisement of Specialist Medical Evidence

3. The success or failure of many entitlement appeals depends on the ability of the Tribunal to appraise the nature and value of what are often complex and highly technical medical arguments. This is particularly so when the appellant has the support of a medical specialist on his particular disability, and when the specialist attends in person to give expert verbal evidence before the Tribunal.

It is respectfully suggested that, if this evidence is to be assessed at its proper value, it is essential that the medical member of the Tribunal should have had recent practical experience in clinical medicine, as distinct from administrative and organisational experience.

To ensure that such specialist medical evidence can be assessed at its true value, it is further suggested that, a panel of recently retired civilian specialists and consultants might be formed, and that the medical member of the Tribunal might be selected from one of these, when any particular case of a highly technical medical nature is to be considered.

4. A further cause of complaint under tbe existing circumstances, which has been voiced by a number of consultants who have appeared to give evidence before Trihunals in support of an appellant, is that the medical representative of the Ministry of Pensions, whose duty it is to present tbe Ministry's case for the rejection of the appeal, is seldom, if ever, the individual who signed the opinion of the Medical Services Division on which the Minister bases his rejection of the claim. Sucb witnesses can not therefore support from personal knowledge the Ministry's opinion, when cross-examined. This fact may operate to tbe disadvantage of the appellant.

Points of Legal Procedure

5. The main points in regard to legal procedure to which my Council desires to draw the attention of your Committee are set out in the accompanying Memorandum.

This Memorandum has been prepared by the Honorary Counsel to the Officers' Association, who have had wide experience of the procedure of Pensions Appeal Tribunals, and my Council desire me to request that the Memorandum may be regarded as an expression of their views in this matter.

Conclusion

6. In conclusion I am desired to represent to your Committee that, in putting forward the foregoing comments on tbe present procedures and practice of Pensions Appeal Tribunals, they are solely moved to do so by the feeling that in some cases, in the past, appellants may have suffered unintentionally; and because they feel that no class of person is more deserving than the disahled ex-Serviceman, or the War Widow, who should be made to feel that he or she has received not only hare justice but also the fairest possible treatment in relation to their appeals.

Yours faithfully,

J. M. L. GROVER,

Major-General,
General Secretary.

PENSIONS APPEAL TRIBUNALS

Pensions appeal tribunals were estahlished by the Pensions Appeal Trihunals Act, 1943, to provide facilities for those aggrieved by decisions of the Ministry of Pensions and National Insurance to appeal to an impartial court. Though described as a tribunal and not as a Court these statutory judicial bodies must he regarded as the ordinary civil courts are regarded because tbey have a like, though limited, jurisdiction, to try issues of law and fact. Their function is to decide whether the conditions of the various Royal Warrants and Orders in Council are fulfilled, though it is to he observed that in doing so they may accept written statements tendered as evidence which would be inadmissible in our civil courts. It is also true that there are no court fees to he paid by the appellants, and that any person, whether he has professional legal qualifications or not, can represent an appellant.

The one great distinction which applies to these trihunals is that the permanent respondent to all appeals, the Minister, is in a position which is unique in litigation. He holds all the evidence in the form of the appellant's medical history and hospital records, and it is his duty on receiving a notice of appeal to prepare a "Statement of the Case" setting forth the relevant facts relating to the appellant's case as known to the Minister, including tbe medical history of the appellant. In service appeals (with which we are solely concerned) this means revealing to tbe appellant for the first time documents which were hitherto officially secret. In addition, the Minister must set forth his reasons for making the decision which is the suhject of the appeal.

For the ordinary layman the Statement of the Case is a formidable and distressing document. It is written in a language incomprehensible to those without medical training, but it is difficult to see how any action by the Minister can remove this circumstance, for his statutory duty under the rules is to disclose the relevant facts and not to re-write the various hospital and medical reports in simple prose understandable to the layman or to gloss over unpleasant facts. In regard to the second duty resting on the Minister, that of giving his reasons for his decision, the position is not the same, and it is our opinion that the present practice presses unfairly on appellants.

Until the decision of the nominated Judge (Tucker J. as he was then) was given in *Moxon* v. *Minister of Pensions* (1945 2 A.E.R. 124) it was usual for the Minister to set out at the end of the medical history an unsigned statement showing why the appeal had been refused. It was pointed out by the learned Judge that, even in quasi-judicial tribunals like the pensions appeal tribunals, such an unsigned statement could not be treated as evidence sufficient to discharge the onus of proof resting on the Minister under the Royal Warrant, 1943 ; and that in any event the Minister's decision, where it involved a medical question, must be in accordance with a certificate signed by a medical officer or board of medical officers appointed or recognised by the Minister for the purpose. As a result in all future cases the Minister added to the Statement of the Case an opinion signed by a doctor authorised to sign for the Medical Services Division. Instead of being a simple statement of medical facts. for example, that the appellant is suffering from such and such disability and that from its nature and the surrounding circumstances such disability is not related to service, these Opinions have grown into very lengthy documents, sometimes running to three thousand words or more.

Often vital statistics are included and long extracts cited from expert evidence given in previous cases or from reported judgments in the High Court and Scottish Courts. The language used is highly technical, and the original purpose of the document seems to have been lost by substituting for the ordinary medical opinion known to the courts a closely reasoned argument on some aspect of medical science. Such essays on the aetiology of various diseases read more like contributions to professional medical journals designed for informed readers than medical evidence for consideration by a statutory tribunal constituted to decide questions of law and fact.

It is submitted, therefore, that unless some change is made grave injustice may result. The appellant who is in a position to seek professional advice from doctors and lawyers, may, perhaps, be able to contend against these weighty medical opinions, but it must be remembered that pensions appeal tribunals were brought into being to enable an unassisted appellant to put forward his case in person. It must add greatly to his difficulties when he is faced with such an authoritative medical opinion, even supposing he is able to understand it. He has not access to the books and judgments and statistics from which citations are taken. Indeed in most cases he has not even seen the relevant article in the Royal Warrant or Order in Council which governs his appeal. Again at the hearing of his appeal he finds the Ministry represented by an expert civil servant who is *au fait* with the requirements of the Statutes and Orders in Council and the regulations. There is provision in the rules to meet such a contingency, namely rule 11 (3) which provides: "It shall be the duty of the Tribunal to assist any appellant who appears to be unable to make the best of his case": and no doubt this rule is observed in the main, but it is obvious that what is really needed is assistance before the hearing in enabling an appellant to understand what are the issues and to procure the medical or other evidence required in order to present his case fairly before the tribunal.

The problem of reforming or altering the present procedure so as to give an appellant a better opportunity of stating his case is not easy. In any event the position must always be difficult where one party to litigation has in his possession all the evidence and is charged with the duty of presenting the relevant facts to the tribunal, and where the same party is fully informed of the law and can

command the assistance of an expert medical and legal service; while the other is often entirely ignorant of the benefits that may be due to him and has to rely in most cases on the kindness of his overworked general practitioner for advice. It seems to us, therefore, reasonable to make the following suggestions which may go some way towards mitigating the hardships which now fall on appellants.

(1) A copy of the relevant Royal Warrant or Order in Council should always be supplied with the Statement of the Case. This in fact is already done in the cases of widows falling within the Great War Warrant Article 16B.

(2) The opinion of the Medical Services Division should be restricted to matters of medical opinion. The doctor should be like the cobbler who sticks to his last. The Ministry medical opinion should be written in simple language which a lay reader can understand and should be confined to the particular issue. It should not consist, as it frequently does, of complicated scientific and legal arguments.

(3) The reasons why the Minister has accepted the opinion of the Medical Services Division and based his opinion upon it should be set out briefly. Reference to evidence given in previous cases should be avoided as far as possible, but if legal decisions are cited a note should be added pointing out where the report may be consulted and telling the appellant that the Ministry representative before the hearing will show him the reports of the cases cited, if he so desires.

If these recommendations were adopted the handicaps now falling on the appellant will be reduced, if not altogether removed. In our view there should not be any difficulty in simplifying the medical opinions of the Ministry and avoiding the use of technical and scientific language which is incomprehensible to the ordinary man.

Reports of cases

Although the pensions appeal tribunals have only been established for twelve years a considerable body of case law now exists. This is due probably to the wording of the 1943 Royal Warrants and the relevant Orders in Council which, for the first time in war disability claims, laid down that the onus of proof should be on the Minister. Some of these cases are reported in the ordinary law reports and readily accessible, but for the most part they are contained in the Reports of the War Pensions Appeals issued by the Ministry of Pensions and National Insurance. The power to publish always carries with it the power not to publish, and there is always the possibility that important decisions favourable to future appellants may not be reported. Apart from this, it is undoubtedly true that these official reports are not available to the general public, or, indeed, even to the professional lawyer save in the libraries of the Inns of Court. If the Ministry intend to continue the practice of relying on past decisions it is obvious that some means must be found of affording an opportunity of consulting these reports.

The Statement that a claim is covered by the decision in the case of AB (together, possibly, with a few lines torn from the context of the judgment or some medical opinion given in evidence in AB's case) is unanswerable if one is denied the chance to see the whole report, whereas consideration of the full report often makes it easy to distinguish the case altogether. The rules provide that in announcing the Tribunal's decision the Chairman "shall indicate shortly the Tribunal's reasons for giving their decision", but in practice it is not unusual for the Chairman to say that the appeal is disallowed for the reasons set out in the medical reports submitted by the Ministry. That form of judgment tends to confuse still further an appellant already bewildered by a torrent of language he cannot understand. Justice may have been done, but it is not manifest that it has been done.

Notwithstanding such comments as we have made above, we consider that it is far better that the Pensions Appeal Tribunals should continue to deal with all matters arising under the Royal Warrant and the various Orders in Council than that the Minister alone should be able to make decisions. In fact, there

would undoubtedly be beneficial results if the present jurisdiction of the Pensions Appeal Tribunals were extended to deal with matters which at present are beyond their powers.

It is obvious that there are many medico-legal problems with which they would be competent to deal, but we propose to confine our remarks to certain aspects of service pensions with which we are chiefly concerned. The references which we shall make to the Royal Warrant concern the Royal Warrant for the Army dated 24th May, 1949, Cmd. 7699, but there are similar provisions for the other services.

We recommend that the Tribunals should be empowered to deal with the following matters: —

(1) At present the entitlement to a disability pension in respect of a disablement incurred before 3rd September, 1939, is decided by the Service Ministry concerned, and not by the Ministry of Pensions and National Insurance. There is no appeal from the Ministry's decision, but we think there should be an appeal to a Pensions Appeal Tribunal.

(2) At present, under article 5 of the Royal Warrant no pension is payable to dependants in respect of the death of a service man more than seven years after the termination of service, unless the deceased was previously in receipt of a pension for a disability which caused the death. We think this clearly unjust, and a tribunal should have power to determine the issue of whether or not the death was affected by service.

(3) Under article 20 of the Royal Warrant the Minister is given wide powers to make deductions or adjustments of treatment allowances. We think his decision should be subject to review by a Tribunal.

(4) Under article 26 (3) of the Royal Warrant, a widow separated from her husband at the time of his death is not entitled to a pension unless in the opinion of the Minister such separation was caused by his mental instability arising from his disablement due to service. We consider that there should be an appeal from the Minister's decision.

(5) The strictness of the last paragraph is mitigated by article 28 of the Royal Warrant, whereby the Minister may award a sum at his discretion if the deceased had been supporting his wife. We think an appeal to a Tribunal should lie in this case also.

(6) Article 65 of the Royal Warrant provides that the Minister shall be the sole interpreter of the Warrant (except as provided by statute). We consider that making the Minister judge in his own cause is wholly wrong, and there should be an appeal to a Tribunal.

In conclusion we consider that, subject to the matters mentioned above, the Pensions Appeal Tribunals generally function very satisfactorily and their powers might well be extended.

T. J. KELLY.
F. R. MCQUOWN.

Outdoor Advertising Industry Advisory Committee

1. The Outdoor Advertising Industry Advisory Committee, representing all sections of the Outdoor Advertising Industry, is particularly concerned with the administrative procedures involved in applications for consent to display advertisements under the Control of Advertisements Regulations made under the Town and Country Planning Act, 1947.

2. For the information of the Committee on Administrative Tribunals and Enquiries an application has to be made to a local Planning Authority for consent to display commercial advertisements and the Authority has the right either to grant the consent for a period of three years or to refuse consent only on one

or two grounds, namely amenity and public safety. In the event of a refusal of consent the applicant has the right of appeal to the Minister of Housing and Local Government and that appeal can be determined either by a public Enquiry or by written observations. A further procedure has been evolved whereby an appeal can be decided by written observations and what is termed an accompanied visit with a representative of each party accompanying an Inspector from the Ministry to the site. The decision in every case is given by the Ministry at some later date, in some cases a considerable time after the appeal has been lodged, and is final and binding. Where an appeal involves a site for an advertisement on a trunk road the views of the Ministry of Transport are ascertained by the Ministry of Housing and Local Government but those views are not disclosed to the appellant.

3. The main criticisms that are made of the existing procedure are:—

(*a*) There is too long a delay in the notification of appeal decisions.

(*b*) Views expressed by any Government Department which may have been a major factor in influencing an appeal decision are not disclosed.

(*c*) The reports of Inspectors who hold the Enquiries or report on the appeal sites are not published.

(*d*) The Minister is not required to give reasons for any departure from recommendations which may be made by an Inspector.

(*e*) Planning Authorities can introduce new matters in further observations on an appeal which have not already been disclosed.

(*f*) Planning Authorities are not given any time limit within which to reply to observations of the appellant and they do not disclose any interest they might have in the subject of the application under review.

4. The Outdoor Advertising Industry Advisory Committee therefore suggests that—

A. Enquiries into appeals should be held with reasonable promptitude and the Minister's decision given with the utmost speed.

B. That where the views of any Government Department are relevant factors in reaching a decision on appeal these views should be made available to the parties in advance and should be open to discussion at the hearing of any Enquiry whether or not oral evidence is given on that hearing in support of those views.

C. That the reports of Inspectors (including their review of the evidence) should be published.

D. That the Minister should always give reasons for any departure from recommendations made in Inspector's reports except where the Minister certifies in any particular case that on security grounds it would be injurious to the public interest to do so.

E. That consideration should be given to the creating of an independent Inspectorate under the Lord Chancellor from which Inspectors could be appointed by any Minister of the Crown to conduct a public Enquiry.

F. That Planning Authorities should not be allowed to introduce any new matter in further observations which was not disclosed in the original observations unless the applicant or appellant is given a reasonable chance to comment thereon.

G. That Planning Authorities should always disclose any interest they might have in the subject of the particular application.

H. That Planning Authorities should be compelled to adhere to a definite time within which to reply to observations of the appellant.

5. If it is desired that the suggestions of the Outdoor Advertising Industry Advisory Committee should be implemented by further evidence this will be forthcoming.

Peace Pledge Union

The Peace Pledge Union is a fellowship of pacifists founded by Canon Dick Sheppard in 1935, on the basis of the pledge " I renounce war and will never support or sanction another ". In view of the very far-reaching consequences of the pledge the P.P.U. does not normally accept a pledge from anyone under the age of 18, but it is naturally very concerned about the interests of all who are liable to be called up for military service about that age, and, in particular, those who claim exemption as Conscientious Objectors.

It would therefore submit to the Committee of Enquiry on Tribunals the following considerations which have reference to the working of Tribunals for Conscientious Objectors set up in pursuance of Section 22 (and the Fourth Schedule) of the National Service Act 1948:

It has not been found possible to define conscience, and the Tribunals which examine an applicant whose name is on the provisional register of conscientious objectors to military service, have therefore been given an impossible task.

The fact that out of the 5,199 applications which came before Tribunals during the period January 1st, 1949, to December 31st, 1955, nearly one-third of the applicants found it necessary to appeal against the decisions of local tribunals and that in nearly 50 per cent. of such appeals the decision was varied, suggests that local tribunals are not functioning in a satisfactory manner. That in many cases the Advisory Tribunal reverses the decisions of Appeal Tribunals and recognises that an applicant had a conscientious objection to military service, indicates that decisions of the Appeal Tribunal also are often at fault.

In attempting to carry out their task, Tribunals have become accustomed to rely on a method of examination which has little, if anything, to do with conscience. Although intended to deal with an applicant's sincerity (which is not the same as conscience), the questions are largely confined to elucidating his circumstances and the extent of his reading or his knowledge of the Bible. In very many instances they seem to be in the nature of " catch " questions which have no relevance to the matter in hand.

There is ample evidence that in the case of those who base their opposition to conscription for military service on religious grounds, some Tribunals seem to base their decisions not so much on the personal conviction of the applicant as on his membership of a religious body, especially the Society of Friends and of the Brethren. On the other hand, some Tribunals are too ready to refuse exemption to others equally sincere because the religious body to which they belong does not officially oppose all wars. This attitude often seriously prejudices an applicant, particularly in the case of Jehovah's Witnesses or of members of other churches whose conscience may lead them to the conclusion that the official attitude of their church to war is not consistent with the teaching of Christ.

The Tribunal cannot have it both ways by demanding on the one hand evidence that an applicant has given serious thought to the question, but on the other criticising him if, as the result of such thought, he is led to differ from the more generally accepted attitude of his church.

Moreover, although the National Service Act does not state, or imply that only objections based on religious grounds are valid, Tribunals often seem to equate " conscience " with religious faith, and by their treatment of " political " objectors imply that a political objection cannot have a basis in conscience.

Far too little heed is paid to the evidence given by those who from personal knowledge of the applicant testify to the genuineness of his claim. As a result, an applicant who finds it difficult to put his innermost thoughts into words, or state his claim convincingly, is at a serious disadvantage. Many applicants are rejected by Tribunals when there is ample proof in written or verbal evidence of the genuineness of the claim to be a conscientious objector.

Statistics reveal that of applicants for total exemption most are either rejected altogether or given conditional exemption. So far as local Tribunals are concerned, the figures for the period January 1st, 1949, to December 31st, 1955

(inclusive), show that out of a total of 5,199 whose names were on the provisional register for Conscientious Objectors, only 143 (or 3 per cent. of the total) were given unconditional exemption. 1,856 were removed from the register and became liable for military service in spite of their claim to be Conscientious Objectors, and 2,059 were only exempted from military service on the condition that they undertook specified civilian work as an alternative.

The exemption of an applicant from participation in what he believes to be wrong is an absolute and not a conditional right. If a Tribunal finds that the claim to conscientious objection has been established they should grant the applicant his rights under the National Service Acts and give him unconditional exemption, whether it is specifically claimed or not. In practice, unconditional exemption has become almost a dead letter so far as the English Tribunals are concerned, and some Tribunals go so far as to suggest that they are not entitled to grant unconditional exemption in spite of the clear provision in the National Service Act.

The fact that the Minister of National Service is not prepared to give directives to Tribunals or to circulate to local Tribunals instances of the reversal of decisions by the Appeal Tribunals, has given rise to inconsistencies in the interpretation of the Act by Tribunals.

The absence of any appeal from a decision of the Appeal Tribunal by way of a case stated to the High Court leaves an applicant no remedy if, as would often appear to be the case, the decision of the Tribunal is against the weight of the evidence submitted or based on a wrong interpretation of the National Service Act.

A fundamental principle of British justice is that it should be so administered as to prevent, as far as possible, any innocent person being convicted, even if that may mean that some who are not innocent are acquitted. We would submit that in view of the impossibility of defining conscience, the difficulty of examining it, and the failure of the Tribunals to carry out the intention of the National Service Act, the only way, if it is the intention of the State to uphold freedom of conscience, would be to grant total exemption on grounds of conscience to all who claim it, even if that would mean that some would evade military service who were not genuine conscientious objectors.

Rating and Valuation Association

GENERAL NOTES

The Scope of this Memorandum

Observations on the constitution, functions and working of local valuation courts selected from local valuation panels to consider appeals arising from proposals to amend rating valuation lists.

The Association

A statement of the Association's connection with, and interest in, the work of local valuation panels will be found at the end of this short memorandum. (Not printed here.)

SUMMARY OF RECOMMENDATIONS

(The paragraph letters below refer to those in the margin of the main memorandum)

(*a*) The constitution of local valuation panels (page 90).

(*b*) Reasons for valuation courts' decision (page 91).

(*c*) Presence of clerk to local valuation panel when court makes its decision (page 92).

(*d*) Possibility of bias and some remedies (page 93).

(*e*) Extended jurisdiction of local valuation courts (page 94).

LOCAL VALUATION COURTS

1. Constitution

Under sections 45 and 46 of the Local Government Act, 1948, provision was made for the formation of local valuation panels by county and county borough councils subject to ministerial approval. The schemes for the formation of panels had to provide for the number of members, their tenure of office, and the appointing agencies; the appointment of chairmen and deputy chairmen of panels; and the selection of members for valuation court purposes (subject to section 44 of the Local Government Act, 1948).

Section 44 of the Local Government Act, 1948, provided for the constitution and convening of local valuation courts from local valuation panel members, to hear and determine rating appeals, and as a result of a proviso added by the Rating and Valuation (Miscellaneous Provisions) Act, 1955, a special dispensation was given whereby if all parties concerned with an appeal agree, a court can consist of a minimum of two persons (instead of the customary three—a chairman or deputy chairman of the local valuation panel and two other panel members). Provision was made for a re-hearing by another local valuation court, where agreement on a decision by a two member court was not possible.

The constitution of particular courts for appeals involving extensive rateable properties could also be subject to Regulation 3 of the Rating Appeals (Local Valuation Courts) Regulations, 1949 (S.I. 1949, No. 2312).

Observations

Suggestions have been made that bias can be shown by members of local valuation courts in favour of particular local authorities; bias that is arising from their appointment as a member of a local authority. More detailed comment on this will be found in paragraph 4 of this memorandum, but if it is thought necessary to reduce any risk of such bias this might be done, when
2) members of local valuation panels are appointed, by reducing the local authority representatives and increasing the non-local authority representatives, even on a fixed proportionate basis if thought advisable.

The Association would like to point out, however, that the willingness to give unpaid public service through membership of local valuation panels may be far greater amongst local authority members than others, and any risk of bias by such members when hearing appeals involving the interest of local authorities has to be weighed against the risk of seriously weakening the total membership of local valuation panels by restricting the appointments of local authority members. One feature of the local valuation courts which contrasts with the assessment committees they superseded is their limitation of a court to three or, in special circumstances, two members.

Bearing in mind the public service point already made, the fact that a hearing can be more expeditiously completed by a numerically smaller court, and the strong probability that a small court of three persons is less disconcerting to inexperienced parties to rating appeals than the well attended but now superseded assessment committees, the present arrangement is far better if these courts are to continue to exercise judicial functions only and are not to exercise the much wider quasi-judicial and administrative functions of their predecessors.

2. Jurisdiction

Sections 44 (1) and 48 (1) of the Local Government Act, 1948, provide that local valuation courts are to be convened for the purpose of hearing and determining appeals arising on proposals to amend rating valuation lists.

Section 48 (4) of the same statute authorises local valuation courts to give the necessary directions to the valuation officer for amending the valuation lists "to give effect to the contention of the appellant if and so far as that contention appears to the court to be well founded".

Observations

The jurisdiction of a court is limited, and particularly so in regard to its decisions which are confined to descriptions and amounts affecting hereditaments and their place of entry in the valuation list. Since local valuation courts constitute an important stage in a comprehensive rating appeals procedure which appears to have been designed to give aggrieved ratepayers the most satisfactory means possible of ventilating their grievances, it is noteworthy that although similar words appear in Rule 38 (4) of the Lands Tribunal Rules, 1949 and 1951 (S.I. 1949, No. 2263 and S.I. 1951, No. 2004) indicating the manner in which the Lands Tribunal is in its turn to give directions for altering the valuation list following its hearing of appeals against local valuation court decisions, they are preceded (Rule 38 (1)) by the requirement that " the decision of the tribunal on an appeal . . . shall be given in writing, together with a brief statement of the tribunal's reasons for its decision ".

It has been suggested that this requirement of "a brief statement of reasons" could most effectively be extended to local valuation court decisions.

The interest of those concerned with rating law and administration in the reasoned decisions of the Lands Tribunal has been clearly shown by the demand for this Association's annual volume of selected Lands Tribunal decisions on rating appeals, copies of which are offered to the committee. These reasoned decisions have been widely welcomed as an excellent means of indicating the extent to which one of the main objects of the Lands Tribunal Act, 1949, has been achieved, that of securing close co-ordination and consistency of decisions.

The earlier local valuation court level, it is suggested, presents a much wider opportunity for ensuring that public confidence is nourished, by requiring a local valuation court too to give " a brief statement of the reasons for its decision ". Clearly where the question is simply one of the quantum of value
(*b*) then the decision will involve only a simple statement, but parties would benefit from a knowledge of a court's opinion and decision on a point of law, the effect of a particular amenity, structural characteristic or other factor thought to affect annual value if local valuation courts were required in all cases to give reasons for their decision. The alternative suggestion that any party might *require* the court to give reasons for its decision is open to the objection that the party concerned might incur the disfavour of the court.

The accessibility of local valuation courts, the special knowledge of annual values possessed by their members, the experience and learning of clerks to local valuation panels and the satisfactory method of appeal on questions of law and fact through the Lands Tribunal and beyond suggest that such facilities might be usefully extended to cover other disputes affecting property where the present machinery for settlement lacks a method of appeal in stages which by its comprehensiveness must be so reassuring to disputing parties. Details under the heading of Procedure (see this page) further emphasise the generally satisfactory nature of the rating appeals procedure.

3. Procedure

It is necessary to refer to Parliamentary debates during consideration of the Local Government Bill, 1948, to note the underlying intention that although local valuation courts should have judicial functions they would be expected to operate with a reasonable degree of informality in view of the fact that inexperienced ratepayers would so frequently be parties to rating appeals. Statutory provisions are to be found in section 48 of the Local Government Act, 1948, as amended by the Rating and Valuation (Miscellaneous Provisions) Act, 1955 (7th Schedule) and the Rating Appeals (Local Valuation Courts) Regulations, 1949 (S.I. 1949, No. 2312). The procedure is left to the courts themselves subject only to what the aforesaid regulations prescribe. Except in very exceptional cases the courts sit in public, they may take evidence on oath, and those who have a right to appear are clearly specified.

The regulations prescribe that appellants are entitled to be heard first but otherwise the court has discretion as to the order in which other parties are heard, and provision is made for postponing or adjourning hearings, prohibiting

the presence of parties to appeals at the time the court considers its decision, and for other matters. In general the statutory provisions cover the major procedural points but a measure of elasticity in minor matters is left with the courts themselves, a necessary concession to secure a reasonable degree of informality.

Observations

Although the Association's membership includes members and clerks of local valuation panels, private rating surveyors, valuation officers of the Inland Revenue and rating authority valuers and administrators, there have been no representations implying that the procedure of local valuation courts was unsatisfactory or inadequate.

Opinions expressed were favourable so far as "reasonable informality" of procedure is concerned, mainly on the grounds that this tended to help the unassisted ratepayer, but a warning often repeated emphasised the unpredictable nature of public reaction following a national revaluation if adequate provision for appeals should be lacking. Put another way, the true testing time for the efficacy of local valuation courts would be under the pressure of appeals extending over a long period after a revaluation. There is no reason to doubt, however, that this administrative need is fully appreciated by the Minister of Housing and Local Government. Some doubt has been expressed about the propriety of clerks to local valuation panels retiring with the members of the local valuation
(c) court when it considers its decision. It is submitted, however, that although the majority of members of local valuation courts are knowledgeable in matters affecting property values there are many pitfalls in rating statute and case law on which the guidance of the clerk is in many cases a far greater guarantee that justice is done than his absence when the court makes its decision is any guarantee that justice might thereby merely seem to be done. The clerk and his staff are expressly excluded by the proviso to section 47 (1) of the Local Government Act, 1948, from carrying out valuation duties on behalf of a local valuation panel, but this exclusion is restricted and would leave the clerk free to advise the court on the law and processes of valuation for rating.

4. Bias

The possibility of bias is thought to arise from the constitution of local valuation courts, whereby so many members appointed under local valuation panel schemes were and remain members of the scheme-making and other local authorities. It would have been unthinkable that it could have been otherwise, bearing in mind the store of experience possessed by assessment committee members, available for service under the new appeals procedure of the Local Government Act, 1948, once the assessment committees were superseded. Bias is also thought to arise through the statutory requirement that appeals should go forward by way of the valuation officer of the Inland Revenue and in the minds of some ratepayer appellants the valuation officer and valuation court are one. A further, somewhat remote, possibility of bias is thought to be visible because one Government department, the Ministry of Housing and Local Government, exercises control over local valuation panels by approval of appointments and salaries of panel staff (section 47 (1) of the Local Government Act, 1948) and another with which it works closely on rating valuation matters—the Valuation Office of the Inland Revenue Department—is almost always one of the parties to rating appeals.

Taking these in reverse order it is doubtful if any evidence could be produced to show that departmental bias could be exercised to put valuation officers of the Inland Revenue Department in an advantageous position at a local valuation court hearing; indeed it is readily admitted by many concerned with these courts that procedure is adjusted to give ratepayers appearing on their own every possible help in stating their case. Moreover, public need alone would surely be the criterion used by the Ministry of Housing and Local Government to determine the number, membership and staffing of local valuation panels. The right of local valuation panels to finance their own expenditure by way of precept on rating authorities is a matter of policy which could only be brought

within this enquiry on constitution and procedure if evidence could be produced that bias of this kind had been demonstrated. The Association has no such evidence.

The second ground, the purely administrative one of dissociating as far as possible the valuation court and valuation officer in the ratepayer's mind, is bound up with the statutory provisions of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, in which it is provided that a dispute is first brought to the notice of a local valuation panel by an act of the valuation officer, namely that he transmits a copy of a proposal and notices of objection to the clerk to the local valuation panel. This act of "transmission" indeed constitutes an appeal to the local valuation court.

This misunderstanding by ratepayers is probably not widespread in practice and one simple solution is that adopted by some local valuation court chairmen of clearing up any possible misconception by a brief explanation at the start of an appeal hearing in appropriate cases.

The main ground bias arising from direct interest in the affairs of a local authority raises a number of questions. Undoubtedly local knowledge is very helpful in appeals relating to annual values and local knowedge can be possessed in high degree by members of local authorities. On the other hand the suspicion of bias could arise on a number of counts. Local bias in favour of *reducing* assessments whenever possible to secure advantages to the locality with county precept calculations and government grants (this form of bias operating against valuation officers), bias in favour of *maintaining* assessments at all costs in order to maintain rate income at the highest level (operating in this case against ratepayers who are parties to appeals). Local bias for electoral reasons, in favour of special local interests and indeed in favour of a quite wide variety of interests closely concerning particular members of local valuation courts suggest that in theory at least bias can be discerned in a host of ways.

(*d*) Any risk of bias, real or potential, could be reduced and almost eliminated by requiring a declaration of interest from members appointed to hear appeals as listed for the occasion of their attendance and by adding a proviso to section 67 of the Local Government Act, 1948 giving parties to appeals the right to object to the constitution of the particular local valuation court before whom they appear, a hearing of the appeal being postponed if necessary. This would still leave one problem and it is the statutory right of rating authorities to become parties in proceedings before a local valuation court without prior notice. Faced with such last minute intervention the clerk to a local valuation panel might be in difficulty, having invited a member of that same authority to take part as a (*d*) member of the court. This too could be very easily remedied by requiring a short period of notice to be given by rating authorities that they would be represented and might wish to intervene in respect of a particular appeal.

Generally the Association feels that the possibility of bias can be exaggerated and if the suggestions made can be followed there would appear to be little cause for genuine complaint.

5. Generally

The amended procedure for rating appeals introduced by the Local Government Act, 1948, the Lands Tribunal Act, 1949, the Rating and Valuation (Miscellaneous Provisions) Act, 1955 and appropriate ministerial regulations has a number of outstanding advantages from the point of view of ordinary people. Local valuation courts and the Lands Tribunal are accessible and inexpensive agencies through which to prosecute appeals, clearly announced public hearings of both ensure that adequate publicity is possible and in most cases it is given, it makes possible a continuous channel of appeals from a local court to an expert tribunal and thence through higher courts to, if necessary, the House of Lords, and there is available through technical journals and other publications an enormous amount of information by means of reports, comment and articles which ensures that a knowledge of decisions over a wide range of cases is available to every litigant.

The Association submits that if certain improvements still remain to be made they do not constitute any serious criticism of the present rating appeals procedure, and the limited extent of any proposals for improvement are perhaps the very best indication of its comparative success. It is submitted that such success achieved over a short period of time—six years—may be the best possible *e)* recommendation for extending the jurisdiction of local valuation courts and the Lands Tribunal.

Royal Air Forces Association

28th April, 1956.

J. Littlewood, Esq.,
Committee on Administrative Tribunals and Enquiries.

Dear Sir,

I am instructed by my Committee to submit to you their views on certain procedures of the Pensions Appeal Tribunals which were set up under the Pensions Appeal Tribunals Act of 1943 and 1949.

It has been the policy of the Association for many years to provide representation at Pensions Appeal Tribunals for those who served in the Royal Air Force or their dependants and the following observations therefore are made in the light of not inconsiderable experience.

Dealing firstly with the question of Entitlement Appeals, the outcome of these depends very largely on the Tribunal's appreciation of the nature and value of highly complex and technical medical arguments. It is our practice, whenever possible, to seek the guidance of medical experts on any particular disability and in certain cases we have arranged for the Specialist in question to attend in person in order to give expert verbal evidence before the Tribunal.

It is, therefore, respectfully suggested that if this evidence is to be assessed at its proper value it is essential that the Medical Member of the Tribunal should have had recent practical experience in clinical medicine as distinct from administrative experience.

This Association respectfully suggests that in the interests of appellants it might be possible to inaugurate a panel of civilian Specialists and Consultants, either still practising or retired within a period of less than five years, from whom the Medical Member of the Tribunal might be selected.

It is also desired to mention, with respect, that comment has been received from Medical Consultants attending Tribunals on behalf of the Appellant that the Medical man who attends in such circumstances on behalf of the Minister of Pensions and National Insurance is not always a Specialist in the particular disease under consideration and is seldom the person who in fact has signed the Opinion of the Medical Services Division of the Ministry on which the Minister bases his rejection of the claim. The Ministry Medical Representative at the Tribunal, therefore, may well have no specialised knowledge or experience of the type of disease which forms the subject of the claim and has probably had no hand at all in framing the Opinion of the Medical Services Division.

The High Court has made it quite clear that Medical Opinions should be put forward in such a way as to be intelligible to a layman, but in many instances the Opinion of the Ministry's Medical Services Division is extremely involved from the technical point of view and must often be completely unintelligible to the average lay appellant.

Turning now to Assessment Tribunals, which consist of two medically qualified members and one lay member, here again it is respectfully suggested that if the evidence is to be assessed at its proper value it is essential that at least one of the medically qualified Members of the Tribunal should have had recent practical experience in clinical medicine as distinct from administrative experience.

At present there is no right of appeal against a decison of the Assessment Tribunals and to bring the procedure into line with that available against Tribunal decisions in respect of the National Insurance Act and the Industrial Injuries Act, when either party to an appeal, being dissatisfied with a Tribunal decision, may appeal to a Commissioner, it is suggested with respect, that decisions of Assessment Tribunals should be subject to a right of appeal to a Specialist or Consultant nominated by the Royal College of Surgeons or the Royal College of Physicians.

Conclusion.—It is desired to emphasise to your Committee that this paper has not been written as a criticism of Pensions Appeal Tribunals generally. The R.A.F. Association has enjoyed the most harmonious relations with the Tribunals and their Secretariat for many years, and we have never lacked cordial co-operation from them. However, many appellants are aggrieved at some of the decisions reached and we are moved to make these representations by the feeling that in some cases in the past appellants may have suffered unintentionally, because quite naturally they feel that the disabled ex-serviceman and the war widow should not only receive justice, but that they are entitled to the fairest possible treatment in relation to their Appeals.

Yours faithfully,

GEO. F. ROPER.

Senior Pensions and Welfare Officer.
For General Secretary.

Rural District Councils Association (South Wales and Monmouthshire Branch)

1. The observations of the South Wales and Monmouthshire Branch have particular reference to planning enquiries which are probably the most common type of enquiry with which Local Authorities are concerned. With the exception of paragraph 9 which relates purely to planning and paragraph 5 where the recommendations made are at present observed in enquiries into the compulsory purchase of land by local authorities, the observations and recommendations apply with equal force to enquiries into land purchase. For matters not requiring consideration of Government policy we are satisfied that the matters entrusted to the Lands Tribunal should remain with that independent body. The Branch are not in a position to comment on the functioning of other Tribunals within the terms of reference of the Committee.

2. Careful consideration was given to the advisability of whether the Inspector appointed to take Enquiries should be independent of the Minister who would ultimately be required to give his decision in relation thereto and, having weighed the advantages which would ensue against the disadvantages which would clearly beset such an arrangement, we feel that the present arrangement should continue with the one proviso that the Inspector taking the Enquiry should be independent of the region concerned.

3. A practical point of very considerable importance is the fact that although an Inspector taking Enquiries has power to subpoena witnesses, presumably including those from Government Departments, he does not do so in practice. It follows that in Enquiries where the views of certain authorities or persons are sought before the hearing of the Enquiry no opportunity is given to the Local Authority or Appellant to test the strength of such evidence by cross examination. It seems to us that it is a basic weakness that no provision is made at the present time to deal with this position and we consider that an Inspector taking an Enquiry should be charged with bringing before the Enquiry those authorities or persons consulted before the hearing. Arising from this matter the question must be considered of the facts or opinions upon which the Minister comes to his determination and here it is suggested that only in unforeseen circumstances should the Minister consult other bodies subsequent to the Enquiry; in other

words the Minister should normally rely only on evidence which is heard by the Inspector. It is, however, appreciated that exceptionally the Minister would have to call for further information subsequent to the Enquiry and in this case the written representations of such Authorities or persons as are consulted should be made available to both sides who, in turn, should be entitled to comment on this evidence and, if necessary, to ask for the enquiry to be re-opened to deal with the specific points raised on such consultation, subject, of course, to the Minister's discretion.

4. Careful consideration was given to the question of whether formal pleadings should be introduced, with a view to limiting and clarifying the issues to be considered at the Enquiry. While such a course, if possible, would be desirable it is felt that the presentation of defined issues would be an extremely difficult if not impossible task for many reasons, not the least of which was the fact that it might place an Appellant not legally represented at a considerable disadvantage.

5. At the present time in Planning Enquiries it is the practice for the Appellant to give his evidence first or, in other words, to show cause why planning permission should be granted in his favour. This seems to us to be completely wrong as it should be the duty of the Planning Authority to justify its decision and this would in addition serve to indicate the nature and scope of the Planning Authority's case and so enable the Appellant to assess the matters he should deal with in presenting his own case.

On the assumption that this suggestion is accepted the evidence of the other Authorities or persons represented at the Enquiry would be called by the Local Authority in the course of their evidence if in fact they relied upon such evidence. If the evidence is not given for the Local Authority then it should be called at the conclusion of the evidence submitted by the Appellants. This arrangement would involve a right on the part of the Local Authority to recall its own witnesses to rebut evidence of the other Authority or person if in fact such evidence is not relied upon by the Local Authority.

6. The present practice at the conclusion of the Enquiry is for the Inspector to inspect the site which is the subject of the hearing and to inform the Local Authority and the Appellant of their right to accompany him. We think that a duty should be placed upon the Inspector to inform the Local Authority and the Appellant of these rights (if this is not already done) and further of the advisability of the Appellant exercising his right.

7. The delay on the part of Ministers in coming to a decision upon an Enquiry is at present often inordinately long and it does seem that a time limit should be imposed. We suggest six weeks as being adequate in all but the most complicated cases.

8. We oonsider that the Inspectors Report should be made available at the request of the Local Authority or the Appellant. It follows from this that if a material fact is omitted from the report or the report oontains a substantial error it should be open for either party at the Enquiry to ask the Minister to accept an agreed statement of both parties as to the correct facts or if this is not possible the Minister should have power to order a new Enquiry on being satisfied that a material fact is omitted from the Inspector's Report. This would entail making subsidiary provisions providing a time limit within which a request for a copy of the Report should be made and for the application for the acceptance of an agreed statement or for a new Enquiry and also for ensuring that no irrevocable action based on the Minister's determination should be taken in the meantime.

9. One further point arises which has a bearing upon the terms of Enquiry but which could probably be more easily corrected by an amendment to Planning Law. It is now possible for a person having no interest in land to apply for planning permission and secure a conditional planning consent which is registerable under the Local Land Charges Register without any person having an interest in the land being aware of what has happened. Several such instances were

brought to our attention and it seems wholly wrong that the one person who has an essential interest in the land, viz., the Owner, is not consulted in the matter and moreover may be prejudiced by this seeming anomaly. This matter has a slight bearing on the term of reference of the present Enquiry as it might still be possible for the applicant who has secured a conditional planning consent, without the knowledge of the Owner of the land, to proceed to appeal against the conditions imposed and unless the Owner is made aware, by a Press or other Notice which usually precedes such an Enquiry, but which as far as we are aware is not a statutory requirement, he may still not be present before the Enquiry. Equally a decision may be reached upon which the owner would if he had known of the application, have exercised his right of appeal against conditions imposed, whereas the person enquiring may be content to accept the position as he finds it.

(*Note*:—For the sake of convenience the person in conflict with the Local Authority is referred to as Appellant although in some forms of Enquiry referred to he is normally called the objector or by some such similar name.)

Scottish Counties of Cities Association

The Committee's terms of reference are as follows:—

"To consider and make recommendations on:—

(*a*) The constitution and working of tribunals other than the ordinary courts of law, constituted under any Act of Parliament by a Minister of the Crown or for the purposes of a Minister's functions.

(*b*) The working of such administrative procedures as include the holding of an enquiry or hearing by or on behalf of a Minister on an appeal or as the result of objections or representations, and in particular the procedure for the compulsory purchase of land."

The Association, who are representative of the four Scottish Counties of Cities, namely, Edinburgh, Glasgow, Dundee and Aberdeen, are naturally interested in the subject-matter of the Committee's deliberations, as their constituent members are often involved, in one or other of their capacities as local authorities, in proceedings before administrative tribunals. They desire therefore to submit the following statement of evidence and recommendations.

So far as local authorities are concerned administrative tribunals can be placed in two categories (*a*) appeal tribunals, (*b*) tribunals of first instance.

Appeal tribunals are appointed to consider appeals to the Minister from decisions of local authorities or other statutory bodies. Examples are appeals to the Secretary of State for Scotland by developers against decisions of a local planning authority under Section 14 of the Town and Country Planning (Scotland) Act 1947 and appeals to the Minister of Transport against decisions of the licensing authority under Section 81 of the Road Traffic Act 1930. In the latter category a local authority can be an appellant as an operator of public service vehicles, or as having sought to have conditions attached to a licence.

Tribunals of first instance are appointed by the Minister (*a*) to consider proposals made by a local authority e.g. a clearance order under Section 26 of the Housing (Scotland) Act 1950, a compulsory purchase order under one of the many statutes providing for such, e.g. section 64 of the Housing Act, or (*b*) to consider an order made by the Minister on his own initiative, e.g. for the combination of police forces under Section 2 of the Police (Scotland) Act 1946, or to conduct an enquiry instituted by the Minister, e.g. into the administration of a hospital under Section 56 of the National Health Service (Scotland) Act 1947.

Another form of inquiry is that held under the Planning Act into objections to a planning authority's development plan.

Whatever the category of tribunal it consists basically of a commissioner appointed by the Minister.

APPEAL TRIBUNALS

Hearings before these tribunals may take the form of a public inquiry or an informal hearing. In the case of a public inquiry the commissioner appointed by the Minister is usually a member of the Bar, assisted on most occasions by a technical assessor or assessors from the staff of the Department concerned or appointed specially for the occasion, and the procedure is usually of a considerable degree of formality, closely akin to that of a parliamentary inquiry. Evidence is led on oath and shorthand notes of the whole proceedings are taken. On the whole, however, the rules of procedure are not enforced so rigidly as in a Court of Law.

The basis of the inquiry is the note of appeal lodged with the Minister by the appellant and in certain cases (e.g. in appeals under the Planning Act) the observations thereon of the body from whose decision the appeal is taken. Where lawyers are acting for the appellant the note of appeal tends to be formal in construction, modelled on a court document. It frequently, however, consists merely of a letter. Latitude is normally allowed to appellants in the presentation of their case and little attempt is made to confine them within the limits of their written pleadings, if they may be so called.

In an informal hearing the commissioner may be an official—administrative or technical—of the department concerned, or he may be an independent person appointed *ad hoc*. He usually sits without an assessor and the procedure before him is markedly less formal than in a public inquiry. Very frequently no evidence is led, the presentation of the case consisting of a statement by either side with a right of reply to the appellant. If evidence is led the witnesses are not put on oath. The object of the hearing is to obtain in an informal way the fullest information and arguments on the matter at issue.

Whether, however, the procedure be by way of public inquiry or informal hearing the function of the commissioner is the same, that is, to present a report to the Minister. In that report he can present the facts as they appear to him, can comment on the evidence, offer his opinions and make recommendations. He cannot, however, give a decision. That function is reserved for the Minister, who in exercising it is neither bound to accept the recommendations of the commissioner nor confine himself to the contents of the report. He is at liberty to seek advice from departmental officials who did not attend the proceedings, and to base his decision on considerations which were not raised in the proceedings and were not in contemplation of any of the parties.

TRIBUNALS OF FIRST INSTANCE

Probably the tribunal in this category most familiar before the war at any rate to Town Councils was that appointed by the Secretary of State to inquire into an opposed clearance order under the Housing (Scotland) Acts. Since the war such orders have been few and far between but with the revived drive against slums they will doubtless again become frequent.

The normal practice in an inquiry of this nature is for the Secretary of State to appoint an experienced member of the Bar to act as Commissioner. He is assisted by one or more technical officials of the Department of Health. As the objectors to the orders are usually substantial property owners who employ solicitors or counsel, the objections are normally drawn up in legal style and the proceedings themselves are conducted with a formality akin to that of a legal tribunal. The First Schedule to the Housing (Scotland) Act 1950 which sets forth the procedure in relation to clearance orders provides with regard to an inquiry that the Secretary of State "shall consider any objection not withdrawn and the report of the person who held the inquiry and may then confirm the order, either with or without modification". The wording raises a question as to whether the Secretary of State would be entitled in considering his decision to go beyond the objections and the report and to proceed for example on the opinions of departmental advisers not participators in the inquiry.

A number of inquiries into objections to development plans have been held. These have followed a regular pattern. The commissioner has been a senior

member of the Bar. After a preliminary statement by Counsel for the Planning Authority the evidence for the objectors has been led, or statements made by them or on their behalf. Rebutting evidence for the planning authority has then been led, and the proceedings have terminated with the speeches for the objectors and the authority. While for the most part objections have been lodged by the dates stipulated in the advertisements of the plans, great latitude has been exercised by the Department of Health in receiving late objections, and it appears that the Secretary of State is willing to consider even an objection stated for the first time at the inquiry itself, of which no previous intimation has been given to the planning authority. The report by the Commissioner is, it is understood, only one of the matters taken into consideration by the Secretary of State before arriving at his decision. He receives reports and advice from various departmental sources, for instance, the Ministry of Transport, the Department of Agriculture. The planning authority have of course no knowledge of the substance of such reports nor the opportunity of tendering evidence or statements in rebuttal thereof. At the inquiry itself no evidence is tendered by Government officials, whose views cannot therefore be subjected to the test of cross-examination. What could perhaps be regarded as an unusual instance of departmental intervention took place in connection with a recent inquiry into objections to a development plan. An objector produced in evidence at the inquiry a letter addressed to him by the Ministry of Supply indicating support of his objection. No approach had been made by the Ministry to the planning authority on the subject, nor had any request been made by them to the authority for information as to the latter's position in the matter. There was of course no representative of the Ministry at the inquiry available for examination.

Inquiries into opposed compulsory purchase orders frequently take the form of informal hearings, conducted by a Departmental official or a commissioner specially appointed. In these cases the procedure is informal, the promoters of the order and the objectors thereto respectively stating their cases. Evidence may or may not be led, and if led is not usually on oath. Sometimes, however, a public local inquiry is ordered, at which the proceedings are more formal. The objectors to the order have submitted their objections in writing but are normally given a great deal of latitude in dealing with these by evidence and argument. Protests by the promoters that they have been given no previous notice of particular points whether of fact or argument being made by the objectors are apt to be treated as irrelevant.

Another kind of tribunal of first instance is the tribunal which holds an inquiry into an order made by the Minister himself on his own initiative. Examples are orders made under the New Town Act and under Section 2 of the Police (Scotland) Act, 1946, providing for the amalgamation of Police Forces. The tribunal is constituted in the normal way, the commissioner being usually a senior member of the Bar, but there is a striking difference between the procedure before it and that before the other tribunals to which reference has been made. In these other cases either the promoters of the order had to justify it and were opposed by the objectors, or the objectors had to justify their objections to proposals made by an authority who in turn rebutted the objections. In other words there are two parties before the tribunal both of whom are given every opportunity of developing their respective cases. There always remains the possibility of course of the Minister being swayed by the opinions of departmental officials who took no part in the inquiry.

In the type of inquiry with which we are now dealing, however, the sole matter at issue is the substance of the objections, which have usually been submitted at considerable length to the Minister some time previously. Presumably the Minister is not prepared to accept the objections, or he would not have ordered an inquiry. Yet the objectors are given no indication of the reasons prompting the Minister to reject the objections, nor at the inquiry does any official from the Department concerned offer a statement or evidence, and submit himself to cross-examination.

Lastly there is the tribunal appointed by a Minister to conduct an inquiry into some specific matter. An example of this would be an inquiry under Section 356 of the Local Government (Scotland) Act, 1947, into an alleged or suspected

failure of a local authority to carry out their functions properly. In the same class would be an inquiry into alleged maladministration of a hospital. Such an inquiry will follow upon a specific or general complaint made by a third person of which the local authority or body concerned will have been informed or upon a letter of complaint from the Minister to the authority or body setting forth the respects in which he has reason to believe their administration is defective. In the case of a complaint by a third party that party will be expected by evidence or a statement to substantiate his complaint but where the inquiry is on the sole initiative of the Minister and springs from his own departmental reports, it may be that the authority will be placed in the position of having to lead evidence to counter a case the full details of which are not known to them.

Section 355 of the Local Government (Scotland) Act contains provisions as to the holding of local inquiries whatever be their nature or source of origin. Subsection (2) provides that save as otherwise provided in any enactment or any statutory order that may be applicable, the Minister may appoint an officer of his Department or any other person to conduct the inquiry and to report thereon to him. Subsequent subsections provide for the giving of notice, the requiring of attendances and the production of books and documents. They confer upon the person holding the inquiry power to examine witnesses on oath with a proviso that he may accept in lieu of evidence on oath by any person a statement in writing by that person. The difficulty of the latter procedure is, of course, that a statement in writing could not be cross-examined. Subsection (8) provides that the expenses incurred by a Minister in relation to any inquiry shall, unless he is of opinion, having regard to the object and result of the inquiry, that the expenses should be defrayed in whole or in part by him, be paid by such local authority or party to the inquiry as he may direct.

There is one feature common to all these tribunals whether of appeal or first instance, namely that the report of the person holding the inquiry is not made public. Not only, therefore, are parties given no opportunity of ascertaining what view the reporter has taken of the facts and arguments presented before him and of representing against his views, but they do not even have the satisfaction of knowing whether the report has in fact influenced the Minister's decision. It is this feature of such inquiries which perhaps above all has given rise to a great deal of the dissatisfaction with these administrative tribunals.

RECOMMENDATIONS

Having regard to the facts as stated above the Counties of Cities Association desire to make the following recommendations: —

(a) Appeal tribunals

1. In all cases there should be some form of written pleadings. These need not necessarily be formal legal documents but they should be such as (*a*) properly focus the issue between the parties, and (*b*) regulate and restrict the matters in dispute within specified limits and thus enable proper notice to be given to each side as to the nature of the case to be presented.

2. A permanent official of the Ministry concerned should normally not be appointed as commissioner or assessor for the hearing of the appeal.

3. Where the appeal is being conducted as a public local inquiry the procedure should be more formal. The commissioner should in all cases be a member of the Bar or a practising solicitor. The written pleadings of both sides should be made up in the form of a Record. All evidence should be given on oath. Shorthand notes should be taken by an independent shorthand writer, who would perform his duties on oath.

4. The commissioner's report should be made public or at any rate made available to the parties to the appeal. In the event of the Minister not accepting the recommendations of the report he should require to state the reasons for his non-acceptance and the sources of any extraneous information upon which he based his decision.

5. In the case of inquiries which involve the obtaining of reports from Government departments before the Minister makes his decision, such reports should be made available to the parties to the inquiry in order that they may, if so advised, make observations thereon before the Minister's decision is made.

(b) Tribunals of first instance

(i) *Inquiries not initiated by a Minister*

1. As in cases of appeals the issue between the promoters and the objectors should be focused by means of written pleadings and unless by agreement between parties the scope of the inquiry should not extend beyond the matters contained in such written pleadings. There should be a time limit for the lodging of objections which should be strictly enforced unless in quite exceptional circumstances.

2. The procedure at such inquiries should follow as closely as may be that in a Court of Law and parties should be required to adhere strictly to that procedure. It is for consideration whether a Code of Procedure on the lines of that laid down in the General Orders under the Private Legislation Procedure (Scotland) Act, 1936, should be drawn up. Such a code would be in the interests of all parties including the departmental officials concerned.

3. The chairman or commissioner holding the inquiry should be a member of the Bar or practising solicitor. If the matters for inquiry are of a technical nature requiring the assistance of an assessor the latter should be independent and not an official of the department concerned.

4. All evidence should be given on oath.

5. Shorthand notes should be taken by a sworn shorthand writer.

6. The report of the commissioner should be made public.

7. The Minister in giving his decision should give his reasons therefor and in the event of such decision differing from the recommendations in the report the Minister should state his reasons for departing from the recommendations and the sources of information upon which he relied in coming to his decision.

8. In the case of inquiries which involve the obtaining of reports from Government departments before the Minister makes his decision, such reports should be made available to the parties to the inquiry in order that they may, if so advised, make observations thereon before the Minister's decision is made.

(ii) *Inquiries initiated by the Minister*

1. All such inquiries (e.g. into administration of hospital) should be preceded by a full statement by the Minister of the reasons which have prompted him to order an inquiry and the other parties concerned should have an opportunity of lodging observations on or answers to such statement.

2. The commissioner should be a member of the Bar or practising solicitor.

3. In no inquiry in this class should an official from the Department at whose instance the inquiry is being held act as technical adviser to the commissioner.

4. The procedure at such inquiries should follow as closely as may be that in a Court of Law and parties should be required to adhere strictly to that procedure. It is for consideration whether a Code of Procedure on the lines of that laid down in the General Orders under the Private Legislation Procedure (Scotland) Act, 1936, should be drawn up. Such a code would be in the interests of all parties including the departmental officials concerned.

5. All information relevant to the subject of an inquiry to be furnished by departmental officials should be furnished at the inquiry by the officials who should give their evidence on oath and submit themselves to cross-examination.

6. In any case in which an inquiry arises from the proposed making of an Order by a Minister, the Minister should be under an obligation to prove to the satisfaction of the tribunal the need for such order by witnesses in the usual way.

7. There should be the same requirements as to publication of reports and decisions and as to the right of appeal to the Courts on points of law as has already been suggested.

8. Where the result of an inquiry initiated by the Minister is that the authority complained against is vindicated or the proposed order is not made, the expenses of the inquiry should be borne by the Exchequer.

The responsibility for the expenses of an inquiry should be in accordance with the following general rules:—

(*a*) Where objections have led to a modification of the proposals the promoters of the proposals should pay the expenses of the successful objectors.

(*b*) Where the objections though reasoned have been repelled each party should pay their own expenses.

(*c*) Where the objections have been shown to be frivolous and unnecessary the objectors should pay all expenses.

(*d*) The expenses of the Central Department, when not borne by the department in accordance with existing practice, should be borne by the promoters except in the circumstances of (*c*) when they should be borne by the objectors.

Scottish Law Agents Society

MEMORANDUM

ON

PRODUCTION OF DOCUMENTS BY GOVERNMENT DEPARTMENTS

In the exercise of prerogative, Government departments have the right to withhold production of documents required by a party to a litigation (known as "Crown privilege") and it is uncertain whether, in England, the Courts have power to over-rule the objection of a Minister. In Scotland it has now been decided by the House of Lords that the Court has an inherent power to do so.

There are conflicting decisions of the Privy Council and of the House of Lords as to the position in England.

In *Pawlett v. Att. Gen.* (Hardres 465) Baron Atkyns said: "The party ought in this case to be relieved against the King, because the King is the fountain and head of justice and equity; and it shall not be presumed that he will be defective in either. And it would derogate from the King's honour to imagine that what is equity against a common person should not be equity against him."

In *Robinson v. State of South Australia,* 1931 A.C. 704, Lord Blanesburgh, after quoting this dictum, continued: "The power of the Court to call for the production of documents for which this privilege is claimed and to determine the validity of the claim for itself was much discussed in argument. The result of the discussion has been, as their Lordships think, to confirm the view of Griffiths C.J. in *Marconi Wireless Telegraph Co. Ltd. v. The Commonwealth* (16 C.L.R. 178) where in effect he concludes that the Court has in these cases always had in reserve the power to inquire into the nature of the document for which protection is sought, and to require some indication of the nature of the injury to the State which would follow its production. The existence of such a power is in no way out of harmony with the reason for the privilege, provided that its exercise be carefully guarded so as not to occasion to the State the mischief which the privilege, where it exists, is designed to guard against."

In *Duncan v. Cammell Laird & Co. Ltd.*, 1942 A.C. 624, Viscount Simon, L.C. disapproved of the view that the Court could inspect documents in order to determine whether their production would be prejudicial to the public welfare; but he went on to say: "The rule that the interest of the state must not be put in jeopardy by producing documents which would injure it is a principle to be observed in administering justice, quite unconnected with the interests or claims of the particular parties in litigation, and indeed is a rule upon which the judge should, if necessary insist, even though no objection is taken at all." He also approved of the dictum by Rigby, L.J. in *A.G. v. Newcastle-upon-Tyne Corpn.*, 1897 2 Q.B. 384, that "there has always been the utmost care to give to a defendant that discovery which the Crown would have been compelled to give if in a position of a subject, unless there be some plain over-ruling principle of public interest concerned which cannot be disregarded."

There is thus no dispute as to the course which should be followed by Government departments, and the only doubt is whether the Court can compel them to follow it.

The Crown Proceedings Act, 1947 (10 & 11 Geo. 6. c. 44) section 28 (1) provides that in civil proceedings to which the Crown is a party, the Crown may be required to make discovery of documents and produce documents for inspection, but without prejudice to any rule of law which authorises or requires the withholding of any document on the ground that its disclosure would be injurious to the public interest.

Sec. 47 makes a similar provision for Scotland whether the Crown is a party to the action or not.

Certain rules have been laid down in *Robinson* and *Duncan* which can be summarised as under. The relevant excerpts from the speeches are given in an appendix (not printed here).

1. The foundation of privilege is that the information cannot be disclosed without injury to the public interest.

2. The Minister, or in his absence the head of the department, must personally examine the documents and himself form the view that production would be contrary to public policy.

3. The following are not good grounds:—
   (*a*) that the documents are "state documents", "official" or marked "confidential".
   (*b*) that they might involve the department or the Government in criticism or disclose inefficiency or open a claim for compensation.
   (*c*) the fact that production will prejudice the Crown's case or assist the other side.
   (*d*) that the department does not want to produce the documents.

4. The following are examples where the public interest would be prejudiced:—
   (*a*) where disclosure would be injurious to national defence or good diplomatic relations;
   (*b*) where the practice of keeping a class of document secret is necessary for the proper functioning of the public service.

In England the approved practice is to treat a Ministerial objection as conclusive. In Scotland the objection may be, but is rarely, over-ruled.

There is no question but that Government departments have seized on 4 (*b*) as an excuse for withholding documents which ought to have been produced and have neglected the principles of equity to which the Courts have directed attention. The dictum that only the gravest considerations of State policy or security justify withholding documents has been completely ignored. There appears to be a praotice, if before *Duncan* privilege was admitted with respect to any document, to regard all documents of that class as privileged.

This is quite apparent when examination is made of the class of case in which a certificate has been produced. These are all, without exception, cases where, at highest, a plea of confidentiality might have been taken in civil proceedings between individuals, and one at least in which a plea of confidentiality would have been repelled.

In *Admiralty* v. *Aberdeen Steam Trawling and Fishing Co. Ltd.*, 1909 S.C. 335, the Secretary to the Admiralty certified that reports by officers relating to collisions were in the nature of confidential communications and that it would be prejudicial to the public service to allow such reports to become liable to inspection by litigants. It will be observed that the documents were stated to be for the information of superiors, and of the nature of confidential communications. That was the only reason given for claiming privilege. In a case between private litigants such reports would have been recovered, but the Court felt bound by the certificate. In other words, the Admiralty used the plea of privilege to prevent disclosure of documents which ought to have been produced.

After the decision in *Duncan* "confidentiality" should have been excluded as a ground for claiming privilege. The following cases show what happens.

In *Smith* v. *Lord Advocate*, 1953 S.L.T. Notes 74, a motor cyclist injured in a collision with a W.D. vehicle sought to recover a report by the driver to his superiors. The Permanent Under Secretary of War certified that the reports "belong to a class of which it is necessary for the proper functioning of the public service not to disclose". In an action between private litigants such reports would have been recovered.

In *Ellis* v. *Home Office*, 1953 2 Q.B. 135, production was asked of medical reports on a prisoner who had assaulted another man and of police reports regarding the incident made immediately after it. A witness wished to look at his statement to refresh his memory. Privilege was claimed. Singleton L.J. said: "In the case of a claim of privilege made on behalf of the Home Office, we are told that the senior permanent official of the department has seen every document. After the adjournment Counsel for the defendants obtained the consent which he regarded as sufficient to allow him to show the document to Counsel for the plaintiff and it was shown. There is nothing in it. We all thought that there might not be. I assume that Counsel who appeared for the defendants at the trial had not seen it. There was no reason why it should not have been produced, nothing which could affect the public interest in any degree".

In *Broome* v. *Broome*, 1955 p. 150, the Secretary of State for War refused to produce as "falling within a class &c." letters received by, copies of letters sent by and memoranda and records made by the S.S.A.F.A. concerning the parties. The S.S.A.F.A. is an independent body and it was not shown how the correspondence came into the possession of the War Office. In a question between private litigants confidentiality might have been claimed and it would have been open to the Court to consider the claim. "Privilege" prevented any enquiry.

The Crown furthermore tried to prevent the representative of S.S.A.F.A. from giving oral evidence by certifying that "it is not in the public interest that the documents should be produced or the evidence of Mrs. Allsop given orally". This was refused and Sacks J. said of Mrs. Allsop's evidence: "On all these points" (matters of fact not concerned with her actings as conciliator) "her evidence was of assistance to the Court: on none of them was there any apparent cause for any intervention in the name of Crown privilege. When the witness's evidence began to verge on later matters which had been her concern in her capacity as conciliator, it was easy to ensure that the principles laid down in *Mole* v. *Mole* were applied. Indeed, counsel for the Treasury Solicitor in the upshot appeared readily to concede that nothing had happened which really called for intervention by the Crown, even if the privilege existed."

In *Glasgow Corporation* v. *Central Land Board*, 1955 S.C. 64, the Corporation asked for production of communications between Inland Revenue valuers showing the methods by which the amount of development charges was calculated. The Solicitor General did not suggest how public interest would be

prejudiced by production. In the Outer House Lord Strachan expressed surprise that the Crown should have seen fit to insist on the objection and said that it might be contrary to the public interest for a department to withhold the documents when its actings are challenged. Lord Radcliffe in the House of Lords said: "The phrase 'necessary for the proper functioning of the public service' is a familiar one and I have a misgiving that it may become all too familiar in the future, if the cases to which our attention is directed (*Smith, Ellis* and *Broome*) are symptomatic of the kind of situation which the formula is supposed to cover."

While these are reported cases, it is known to the legal profession that there are numerous other instances which show that it is the regular practice of Government Departments to decline to produce documents without adducing any reason; and where a class of documents exists which must be kept secret for the proper functioning of the public service, production is regularly refused of other documents of a similar nature, irrespective of whether it is necessary that they should be kept secret; while Departments are prone to seize upon any aspect of a case which can possibly be used to bring documents within an excepted class.

The question thus arises whether when production of a document is sought the Certificate of a Minister ought not to specify the class to which a document belongs and to show *prima facie* reasons why the Court should not order its production.

It is clear from the manner in which the right to claim Crown privilege has been exercised that it is not in the interests of justice that the Ministers or permanent heads of departments should have the power to grant an "unexaminable certificate", but some safeguard must be interposed to prevent abuse. As those laid down by the Courts by way of explaining the manner in which the Minister should exercise his discretion have proved insufficient, it is submitted that legislation should provide—

(1) Whenever privilege is claimed the Minister must state the reason in particular terms and must indicate the nature of the injury to the State which would follow the production of the document.

(2) That the Court shall be entitled to enquire into the nature of the documents for which protection is sought, and to call for production under seal.

(3) That if the Court is dissatisfied with the reasons adduced in the Minister's certificate it should have power to compel production.

Society for Individual Freedom

The Society for Individual Freedom respectfully submits the following observations for consideration by the Committee on Administrative Tribunals:—

Constitution of the Society

1. The Society for Individual Freedom (which for brevity will throughout the observations be referred to simply as "the Society") was founded by the late Sir Ernest Benn, Bart, and the late Lord Lyle in or about 1945. It has amalgamated with the Society of Individualists and the National League for Freedom. It now consists of over 3,700 members. The present officers and the National Council of the Society are as follows:—

(Not printed here)

2. The Society is non-political in the sense that it does not adhere to or owe allegiance to any political party. Its funds are raised by voluntary subscription among its members and it does not receive any funds or help from any political party or other organisation. It publishes a quarterly magazine entitled *Freedom First* containing articles of interest to its members.

Aims and objects of the Society

3. The members of the Society are united in regarding the individual as being the all important unit of civilised society. Any compulsory restriction of individual freedom is, in the opinion of the Society, a degradation not only of the status of the individual but of the Society of which he forms a part. In this, as in similar respects the Society follows that school of philosophy which may perhaps be exemplified by John Stuart Mill. There is annexed hereto a pamphlet entitled *Manifesto on British Liberty* compiled on behalf of the Society which the Society feels will be a sufficient declaration of the aims of the Society for the present purposes. (Not printed here.)

4. While individual freedom is thus regarded by the Society as being of itself an object worthy of attainment, the members do not wish it to be thought that they do not recognise that individual freedom must of necessity be curtailed to some extent. The freedom of one individual must, it is recognised, be restricted in some respects in order to ensure freedom for others. The Society, furthermore, does not deny that there may be other justifiable reasons for curtailing individual freedom. The members, in fact, are anxious not to promote completely unfettered individual freedom but rather to ensure that no arbitrary or unnecessary restrictions are placed upon such freedom.

5. The primary means by which the Society is endeavouring to promote its objects is by arousing public feeling to a realisation of the extent to which individual freedom has been and is being curtailed and to the dangers which, in the opinion of the Society, will necessarily follow. By propaganda and united action the Society hopes to play its part in influencing the Government of the day to take the necessary steps not only to restore a large portion of vanished individual freedom but also to safeguard that freedom for the future. For this purpose its members are resolved to support any measures which in their opinion are likely to restore and safeguard individual freedom no matter by whom or by what political party they may be promoted.

Meaning of the expression "Individual Freedom"

6. The term "Individual Freedom" as used by the Society is not confined to the more obvious freedoms such as freedom of speech and freedom from arbitrary arrest but in a wider sense. The wider sense thus adopted by the Society means the established freedom accorded by the common law apart from any statutory restrictions. Any statutory interference with the established common law rights of an individual is thus regarded by the Society as being an infringement of his freedom, as also is any compulsory restriction on the use or ownership of property. In general it seems to the Society that the opposite of "freedom" is "compulsion" so that where compulsion other than the compulsion of the common law is applied to an individual there is to that extent a curtailment of his freedom. As has already been emphasised, the Society does not necessarily regard every interference with individual freedom as being an unjustifiable or, simply because it is such an interference, as being undesirable.

Object of present observations

7. The Society hopes by these observations to be able to some extent to further its aims and objects. It has considered whether for that purpose it should place before the Committee detailed and specific observations or whether it should merely set out its general principles and for the greater part leave to the Committee the detailed application of those principles to the matters being considered. While the Society appreciates that the report of the Committee is likely to be of a detailed nature and that consequently detailed representations by the Society would probably be of greater value than statements of principle, it has been decided not to attempt any detailed or specific observations. The reasons for this are two-fold namely:—

(*a*) With the time and resources available to the Society any attempt to apply in detail its aims and objects to individual tribunals or to make specific recommendations on each such tribunal would be a task out of all proportion to the value of the resulting document.

(*b*) It is apprehended that various bodies representing particular groups of individuals are also submitting observations for the consideration of the Committee and which, because of the narrower nature of the interests concerned, are of a more specific nature. In so far as the policy or purpose of the bodies referred to is not inconsistent with the aims and objects of the Society it seems that such detailed consideration in those particular instances is likely to be more efficacious in achieving the aims and objects of the Society than would the application of broad general principles.

8. The details of numerous cases where the principles for which the Society stands have apparently been violated have been brought to the attention of the Society. Here again the Society has been in doubt whether to adduce before the Committee the details of all or some of those cases. As, however, many of the cases referred to would be of no concern to the Committee as lying outside its terms of reference any attempt to adduce the details of appropriate cases would involve a difficult and tedious task of selection. Moreover, it is felt by the Society that as the ensuing observations must, for the reasons already stated, be confined largely to a statement of general principles detailed exemplification would in any event be misplaced. The Society wishes to emphasise, however, that the details of the cases referred to are available and that the Society is not only ready and willing to produce them to the Committee but would welcome any opportunity to do so should the Committee indicate its wish that such should be done.

9. Notwithstanding that, for the foregoing reasons, the ensuing observations are likely to prove of only limited value to the Committee it is considered right that the Committee should be made aware of the attitude of the Society towards the matters which the Committee has been called upon to consider. Not only, as has been stated, would the Society welcome an opportunity to adduce to the Committee the facts of individual cases hut it would also welcome an opportunity to enlarge upon the ensuing observations either in writing or orally before the Committee should the Committee wish it to do so.

Scope of present observations

10. The Society realises that much, if not the greater part, of its aims and objects is outside the terms of reference of the committee. It is realised, for instance, that the committee is not concerned with the views of the Society upon the limits to which interference with individual freedom is justified or desirable. For the purpose of the present observations the limits of justifiable interference with individual freedom will therefore be taken as given so long as those limits have heen clearly defined hy the common law or by any particular statute. If the extent of interference by legislation were precisely defined in the statutes and if the individual had an unfettered right of redress in every case in which there were any interference beyond those limits or the limits prescribed by common law it would follow that the Society would have few, if any, observations to place before the Committee. The difficulty is, however, that when restricting individual freedom the legislature, instead of defining the precise limits of such restriotion, has in many cases conferred upon Ministers a power to restrict freedom which through the absence of any effective right of redress on the part of an aggrieved person has in practice hecome to a greater or lesser extent unfettered. It is proposed, therefore, to confine the present observations to the exercise of those powers by or on behalf of the executive which limit individual freedom. The concern of the society for the present purposes is likewise limited to ensuring that some method be evolved for testing whether in any particular instance the exercise of a power by the executive which restricts individual freedom is or is not within the limits clearly intended by the legislature and which (for present purposes only) is assumed to be justified.

General principle applicable to all Tribunals

11. The society is of opinion that no person or group of persons should he deprived of any personal or proprietary rights or suffer any other interference with freedom as the result of the exercise by the executive of a power unless

in relation to the exercise of that power the well known principles of natural justice have been observed. It seems to the Society that this broad principle involves as corollaries that when a Minister has acted or is proposing to act in a matter which restricts individual freedom

(*a*) Every individual concerned should have the right to be told the facts which have been assumed by the Minister

(*b*) in so far as the Minister has acted or is proposing to act not solely upon assumed facts but also upon policy, any person concerned should have the right to be told the precise principle of policy upon which the Minister so acted or proposes to act

(*c*) Before assuming any fact which is disputed by an interested party the Minister should, in relation to the disputed fact, act in accordance with the principles of natural justice

(*d*) In applying principles of policy to any assumed facts the Minister should likewise act in accordance with the principles of natural justice. It is not intended to mean by this that the policy itself need be fair or just, that being in the opinion of the Society a matter not for the judiciary but for the legislature

(*e*) An aggrieved person should have the right and the means of redress in every case where he has been deprived of freedom in violation of any of the foregoing.

12. In laying down the broad proposition that the principles of natural justice should apply to every case where the freedom of the individual is curtailed by Ministerial action the Society recognises that it is departing from the distinction usually drawn between a purely administrative act on the one hand and the action of a Minister while acting in a judicial or quasi judicial capacity on the other hand. The principle is thus a departure from the present position in which the Courts have held that they are incompetent to enquire into the validity of administrative acts provided those acts purport or are stated to be in the exercise of a power validly conferred and are of an administrative nature. The Society has consciously departed from that present position as it can find no justification for drawing a distinction between the nature of a Minister's acts for the purpose of deciding whether the Minister should or should not in any particular instance when curtailing individual freedom act in accordance with the principles of natural justice. In the opinion of the Society, when a Minister is given power to curtail individual freedom he should in every case be required when exercising that power to act fairly and judiciously in relation to those whose freedom he is proposing to curtail. In deciding whether the principles of natural justice should be observed in relation to a Ministerial act the Society thus thinks that regard should be had not to the nature of the act but to the results of the act on the freedom of the individuals concerned.

13. The present position that a Minister cannot be required to act in accordance with the principles of natural justice if he is acting in a purely administrative capacity and even though he is seriously curtailing the freedom of an individual appears to the Society to be so contrary to the British tradition of the rule of law that many of its members have been forced to conclude either that the judicial definition of an administrative act is at fault or that erroneous inferences have been drawn from that distinction.

The distinction on which the Courts have acted between a purely administrative act on the one hand and a judicial or quasi judicial act on the other hand is hard to ascertain with any precision. It seems, however, that for the purpose of defining the distinction the Courts have had regard to the duty of the Minister to consider the public interest. It would seem that where, in reaching a decision, the Minister is under a duty to consider the public interest the Courts have held his action in so deciding to be purely administrative and not therefore subject to invalidity on the grounds of want of natural justice. The Minister, it seems, in such circumstances is held by the Courts to be the sole judge of what is and what is not in the public interest and is answerable only to Parliament (The

Committee is respectfully reminded of the judgment of Lord Greene in *Johnson & Co.* v. *The Minister of Health* 1947 2 All England Reports 395). It is the opinion of the Society, however, that save perhaps in times of grave national emergency there is no greater public interest than the maintenance of the rule of law; that it is contrary to the rule of law that any person should he deprived of personal or proprietary freedom hy an act or proceeding which has violated the principles of natural justice and that consequently any ministerial act which has that result is or should he treated as being of a quasi judicial nature. The society sees no reason why (in the example given hy Lord Greene) any Minister who relying upon information contained in a file, disregards the facts found or the recommendations given hy an Inspector at a public enquiry should not be compelled to produce that file or so much of it as relates to the facts upon which he relies. A possible exception might he in cases where the production of the file would disclose matters prejudicial to the safety of the Realm but methods for ensuring that such an exception could not be abused should not he difficult to devise.

The Committee is also respectfully reminded of the distinction drawn hetween administrative and quasi judicial acts hy the Committee on Ministers Powers which sat under the Chairmanship of Lord Donoughmore in 1932. In paragraph 4 of Section 3 of its report (Cmd. 4060) that committee said "When a person resolves to act in a particular way, the mental step may he described as a 'decision'. Again when a Judge determines an issue of fact upon conflicting evidence, or a question of law upon forensic argument, he gives a 'decision'. But the two mental acts differ. In the case of the administrative decision, there is no legal ohligation upon the person charged with the duty of reaching the decision to consider and weigh suhmissions and arguments, or to collate any evidence, or to solve any issue. The grounds upon which he acts, and the means which he takes to inform himself before acting, are left entirely to his discretion." It would seem consequently, that in the opinion of that Committee the proper test whether an act was administrative or quasi judicial is to ascertain whether the grounds upon which the Minister acted and the means taken hy him to inform himself hefore acting were left to his discretion. With the greatest respect to that distinguished Committee, however, the memhers of the Society are of opinion that if the object of the distinction is to ascertain in what circumstances the principles of natural justice should he applicable to a Ministerial act it is tautological to make the distinction depend upon whether those principles are in any particular instance in fact applicahle. Put thus it seems that the distinction hetween the purely administrative and the quasi judicial act is not one of kind hut simply one of process and does not assist in answering the question whether the principles of natural justice should be observed hefore any particular action is taken.

The Society does in fact distinguish hetween the purely administrative action and the quasi or judicial action. In the opinion of the Society, however, the distinction is to be discerned from the effect of the action. If the action is such that it must necessarily compel the curtailment of the personal or proprietary rights of an individual which theretofore existed the Society is of opinion that it is judicial or quasi judicial but that otherwise it is administrative. The Donoughmore Committee itself, in the Section of its report already referred to, gave as examples of purely administrative acts the decision of the Admiralty to place a contract for stores and a decision of the Home Secretary to grant naturalisation to a particular alien. Neither of such actions would interfere with any pre-existing rights of contractors in the one case or of aliens in the other; the Society respectfully concurs, therefore, that each is a purely administrative act hut respectfully disagrees with the reasoning. On the other hand, an example of a ministerial act which in the opinion of the Society has heen wrongly classified as purely administrative is the decision whether to confirm a compulsory purchase order for land. Since a compulsory purchase order necessarily infringes the freedom of the owner of the land the Society, applying the foregoing tests, considers that the principles of natural justice should be applicable to that act and that therefore it would more correctly be described or classified as quasi judicial.

General Application of the Principle

14. The Society respectfully adopts the definition of natural justice given by the Donoughmore Committee in its report as also the recommendations of that Committee that the principles should be made applicable to all Tribunals acting in a quasi judicial capacity. The Committee is respectfully reminded that the four principles of natural justice referred to by the Donoughmore Committee were (*a*) that no man should be a judge in his own cause (*b*) that no person should be deprived of his rights unheard and that if his right to be heard is to be a reality he must know in good time the case he has to meet (*c*) that the grounds of the decision should be communicated to the parties concerned and, if of general interest, to the public and (*d*) that in the case of a "public enquiry" conducted by an Inspector appointed by a Minister the Inspector's report should be available to the parties who have been heard. The arguments advanced by the Donoughmore Committee in 1932 for the application of the foregoing principles apply, in the opinion of the Society, with even greater force today.

The application of the general principle that no person should be deprived of his personal or proprietary freedom by Ministerial act unless the principles of natural justice have been observed thus leads in the opinion of the Society to the following conclusions: —

(*a*) The principle that no person should be a judge in his own cause leads to the conclusion that it would in every case be desirable that the members of a Tribunal should not be appointed by the Minister concerned. The Society recommends that all such members should be appointed by the Lord Chancellor. It is recognised that in many cases the Minister has no direct interest in the decision of the Tribunal but it nevertheless is felt that it would be desirable to have a uniform procedural appointment for all Tribunals. It will be appreciated moreover that the appointment by the Lord Chancellor would remove any suspicion that the Tribunal is biased through allegiance to the appointing Minister or that the Tribunal may receive instructions from the Minister on the manner in which it should decide particular cases or the factors that it should take into account. It would, for example, appear to be common practice for many Rent Tribunals to fix a "reasonable rent" in precise and peculiar amounts that are evidently the result of calculation. The method of calculation is not, however, known to the parties appearing and since such a practice is common the inference is drawn that the Tribunals have received instructions on the point.

(*b*) The same principle leads the Society to conclude that the question of what documents should be produced by the Minister should not be left to the Minister concerned. Subject only to matters concerning the safety of the Realm the Society sees no valid reason why the Tribunals should not have power to order production of any documents.

(*c*) The Society is concerned that before some Tribunals interested parties have no right to be represented by Counsel or Solicitors. It would seem to be indisputable that many persons are largely incapable of presenting cases themselves and that such persons should be faced with the alternative of either presenting their own case to the best of their ability or of relying on gratuitous offers of help of employing some unqualified individual to act as advocate seems to the Society to be not only unjustifiable but in direct conflict with that rule of natural justice which prescribes that no person should be deprived of his rights unheard. The Society recognises that Legal representation may have been excluded for the purpose of simplifying and cheapening the hearings but the Society must record that besides causing resentment in the legal profession the ruling has inevitably created the impression among some persons that the sole object of excluding qualified advocates is to enable the Tribunals concerned to act unchecked in defiance of legal principles.

(*d*) In the opinion of the Society there should be a uniform code of procedure applicable to all Tribunals. Not only is the present multiplicity of procedures confusing but in many instances it deprives parties of the

opportunity of knowing in good time the precise case to be met. It is suggested that a uniform code of procedure could be introduced which provides for the case being put forward on behalf of the authority or the Minister to be set out with sufficient particularity of fact before the hearing to enable interested parties to know what evidence they should adduce. It is appreciated, however, that as there is no *lis* in the true sense of the word it would be impracticable to have anything equivalent to formal pleadings.

(*e*) That the established rules of evidence should be applicable to hearings before Tribunals. It seems to the Society to be indisputable that the most efficacious methods of ascertaining disputed facts is that evolved by the Courts of law after centuries of experience. That the rules of evidence should be strictly adhered to in the case of disputes between private individuals but should be ignored in cases where the individual is being compulsorily deprived of his freedom by ministerial act is, in the opinion of the Society, an anomalous and unwarranted difference. Either the rules of evidence are necessary for the true ascertainment of disputed facts or they are not. If they are necessary (and so far as the Society is aware the necessity for them has never been disputed by any competent Court) then, in the opinion of the Society they should be made applicable to each and every case where the facts upon which any person is being or is proposed to be deprived of his freedom are disputed by him. The Society have available the details of numerous cases where it is convinced great injustice has been caused through the wrongful admission or rejection of evidence at administrative tribunals. While the most startling examples are perhaps those of Rent Tribunals and of Tribunals appointed solely for the purpose of "informing" the Minister there are many which relate also to the compulsory acquisition of land and other matters.

(*f*) That all oral evidence should be given on oath. The foregoing observations relating to the rules of evidence appear, in the opinion of the Society, to apply to equal force to this matter. The Society do not wish it to be thought that they are of opinion that all evidence upon which a Minister acts when exercising a power which affects the freedom of an individual should be given orally. The Society thinks that it might well be sufficient in many cases for documentary evidence to be adduced provided interested parties have ample and sufficient opportunity of contesting such evidence. Where, however, there is any clearly defined issue of fact it would seem that such issue can best be determined by oral evidence and cross-examination. Where such oral evidence is given the Society can see no reason why the experience of the Courts should be ignored and recommend that all such evidence be given on oath.

(*g*) That the Chairman of all Tribunals which ascertain disputed facts should be a qualified lawyer. The ascertainment of disputed facts must ultimately, it would seem, involve the weighing of evidence and it is the opinion of the Society that a qualified lawyer is the most suitable person for such a purpose. This rule might well be abrogated in any case where an aggrieved person has a right for the whole matter to be reheard on appeal provided the appellate Tribunal is presided over by a legally qualified person.

(*h*) The Society has nothing to add to the third and fourth principles of natural justice enunciated by the Donoughmore Committee. It can see no reason why parties should not be informed of the grounds of a decision after a hearing before a Tribunal. The failure to be so informed inevitably causes suspicion that the findings of the Tribunal have been arbitrarily ignored. The suggestion which has been made that the publication of the grounds of decision might embarrass the Inspector or Chairman of the Tribunal is in the opinion of the Society groundless. It would seem, indeed, that the very making of the suggestion indicates that the Minister might not wish to give the reason for rejecting an Inspector's

recommendation on the grounds that he has no valid reasons for doing so. The Society wishes to invite the attention of the Committee to the fact that at least one Ministry of State (the Ministry of Education) apparently makes a practice of communicating the Inspector's reports after a public enquiry to the parties concerned and the Society fails to understand why if such a practice can work with satisfaction in one Ministry it should not also work in other Ministries.

(*i*) While it does not, perhaps, logically follow from the principle which has been enunciated the Society is of opinion that it is in the interests of individual freedom that as many as possible of the judicial and quasi judicial actions of Ministers should be determined by the established courts of law. It is an unfortunate fact that with a few notable exceptions such as the Lands Tribunal the Society have recorded a deep and widespread belief that justice is not done in the existing Tribunals. In the case of some Tribunals and notably many of the Rent Tribunals there is a widespread feeling among property owners not only that justice is not done but that no attempt is made to see that justice is done. In the opinion of the Society the feeling of frustration at injustice is even stronger and more widespread in those cases where the Minister has exercised powers which the Society classified as quasi judicial but which are generally classified as administrative. The Society has found on the other hand that as far as the established courts are concerned and especially those courts presided over by a qualified lawyer the general attitude is that the cases in which justice is not done or not seen to be done are comparatively rare. The Society recognises that Tribunals are often appointed because of the allegedly technical nature of the subject matter but it is of opinion that this affords no valid reason in the majority of cases for not referring the matters to the established courts, which can, if necessary, either sit with assessors or hear expert evidence.

Remedies of Aggrieved Persons

15. The observations so far made relate in the main to the application of the rules of natural justice to ministerial decisions affecting individual freedom. It seems clear to the Society that if it be conceded that such principles must apply any person aggrieved by a decision made in violation of those principles must be given a right of redress. The right of redress must clearly, as it seems to the Society, involve proceedings in the established courts of law to test, in the first place, whether the principles of natural justice have in fact been violated. The Society consequently recommends that all such decisions should be subject to certiorari or prohibition. Except in so far as relates to the procedure for the compulsory purchase of land it may be that this recommendation lies outside the terms of reference of the Committee. On the other hand it is possible that the recommendations of the Society in this respect could be achieved by a uniform rule that the orders of all Tribunals should be "speaking orders" and that the Courts should have power to quash any order which is not "speaking" or sufficiently speaking.

16. In confining these observations to the application to ministerial acts of the principles of natural justice the Society does not wish it to be thought that it does not consider any other remedy or control is necessary in the cause of individual freedom. That the application of the principles of natural justice is only the bare minimum and the indisputable moral right of every person seems to the Society to be beyond serious doubt. The Society is of opinion, however, that much more is in fact necessary if the dangers of totalitarianism or unfettered bureaucracy are to be avoided and if justice is to be done. In particular it is of the opinion that every ministerial decision affecting the rights of individuals should be open to review by some persons or body set up for that purpose. In this respect the Society looks with admiration at the functioning of the Conseil d'Etat in France. The Society is aware of the arguments generally advanced to show that a review of ministerial acts would be unworkable and in particular of the argument that the Conseil d'Etat is able to act

as it does only by reason of the weakness of Government in France. The Society attaches little credence to the validity of these arguments more especially when it observes how (unlike France) the judiciary in England has been able to control the Police Force in the interests of individual freedom.

17. The Society is consequently of opinion that some method of control of the Executive by the judiciary is essential. It is aware that various suggestions have been put forward on behalf of or by members of various political parties to this end. As has already been emphasised the Society itself is non-political and does not, therefore, feel called upon to prefer any one suggestion as against any other. In any event the Society does not feel competent to choose between the two systems put forward by members of the Conservative Party and of the Liberal Party respectively. It is of opinion that all it can usefully say in this connection is that the members would welcome the introduction of either of the systems recommended. It respectfully invites the attention of the Committee to the two publications concerned. They are—

(a) *Rule of Law* by the Committee of the Inns of Court Conservative & Unionist Society.

(b) *Government under the Law* by a sub-committee of " A Hastings Group " of National Liberals.

18. In addition to the foregoing the Society wish to invite the attention of the Committee to the views expressed by Professor Hamson in his work *Executive Discretion and Judicial Control.* The Society appreciate that Professor Hamson is there primarily describing the Conseil d'Etat but the Society nevertheless fully concurs with the observations of Professor Hamson in chapter 5 headed " Some reflections " and expresses the hope that the Committee may wish to hear Professor Hamson himself on those aspects of the subject matter which falls within the terms of reference of the Committee.

Society of Clerks of Valuation Panels

1. The Society of Clerks of Valuation Panels understands that the Committee is desirous of reviewing the constitution and working of tribunals, including local valuation panels and local valuation courts. The Executive Council of the Society desires to submit to the Committee the views of the members, with a view to affording such assistance as we are able in the absence of any submissions by chairmen and members of valuation panels who have no association to represent their views.

2. The Objects of the Society, formed in 1950 with the coming into operation of the Local Government Act, 1948, are defined as follows:

> "To promote the interchange of knowledge and ideas relative to all matters affecting Clerks of Valuation Panels, and to promote research and investigation with the object of increasing their capacity to serve the community and particularly Valuation Panels in England and Wales."

LOCAL VALUATION PANELS

Constitution

3. Local valuation panels were constituted under section 45 of the Local Government Act, 1948, by schemes made by the councils of every county and county borough in England and Wales and approved by the Minister of Health (now the Minister of Housing and Local Government).

4. Valuation panels and local valuation courts came into operation on the 1st February, 1950. Prior to that date the hearing and determination of proceedings in respect of rating assessments was the responsibility of assessment committees first constituted under the Union Assessment Act, 1862, and later under the Rating and Valuation Act, 1925, etc.

5. The Ministry of Health, in circular 68-48, dated 10th May, 1948, dealing with the making of schemes for the constitution of valuation panels (addressed to county and county borough councils) stated:

> "I am to say that the Minister regards the work of these Panels as of the first importance. Parliament has decided that the actual work of valuation should be centralised and the Panels provide the link with the local interest in rating assessments which has existed hitherto. It cannot be too strongly stressed that the work of the valuation courts is entirely judicial and in no sense administrative and the Minister feels sure that in making their appointments and in co-operating in the working of the new provisions local authorities will see the importance of maintaining this position."

MEMBERSHIP OF VALUATION PANELS

6. Valuation panels differ in size and membership (as did the former assessment committees) and no hard and fast rule is laid down as to the number of members to be appointed. New panel schemes are at present being made by the county and county borough councils to increase the number of deputy chairmen and members in order to meet the added responsibilities of the revaluation. Hitherto membership of the panels has generally been kept as low as possible—in the words of the Minister—"to reduce the risk of varying decisions and to secure the maximum of experience to each member."

7. Members of valuation panels are appointed by the scheme-making authorities from members of such authorities, from local authorities within the area of the valuation panel and from other persons who have no local authority connections. The chairmen and deputy chairmen in some instances are appointed to such offices by the scheme-making authorities; other schemes provide for the panels themselves to make these appointments from among their members.

8. By section 67 of the 1948 Act a person is not disqualified to act as a member of (or as clerk or an officer of) a local valuation panel or valuation court by reason *only* that he is (*a*) a member of an authority deriving revenue directly or indirectly from rates which may be affected by the exercise of his functions; or (*b*) the owner or occupier of any property within any rating area the rates within which are affected by the exercise of his functions, and a person shall not be disqualified from acting in relation to any property by reason only that an authority of which he is a member either owns or occupies the whole or any part of that property.

9. Nothing in section 67, however, authorises any person to act in relation to any property which, or any part of which, he himself owns or occupies.

THE RESPONSIBILITY OF VALUATION FOR RATES

10. Under section 33 of the Local Government Act, 1948, rating authorities ceased to have any functions in relation to the preparation and amendment of valuation lists. Prior to the 1st February, 1950, in view of the rating authorities' functions, any person who was a member of any committee to which the duties of the rating authority with respect to the making of valuations for rating were delegated was disqualified from appointment as a member of the assessment committee.

11. Since the 1st February, 1950, the preparation and amendment of valuation lists have been the responsibility of valuation officers of the Commissioners of the Board of Inland Revenue. Local authorities have not been directly concerned with any of their former functions but in view of the fact that valuation for rating is (and always has been) regarded as a matter of "local" concern and the Minister's statement (para. 5 of this Memorandum) that "the Panels provide the link with the local interest in rating assessments which has existed hitherto", local authority members have been appointed, together with other persons, to serve on valuation panels and the local valuation courts.

FUNCTIONS

Assessment Committees—Valuation Panels—Local Valuation Courts

12. Although, as in the case of assessment committees, members of valuation panels are locally appointed representatives who give their services without fee or reward, there is a major difference between the functions of these bodies.

13. Assessment committees sat, and acted, as "committees" (comprising, in some areas, thirty or more members) to whom the parties, generally the ratepayer and the rating authority and, on occasions, the county valuation committee, made their submissions. Assessment committees were not "courts" in the strict legal sense but acted judicially in deciding matters affecting the rights and burdens of citizens. This major function of assessment committees— to hear and determine proceedings in respect of rating assessments—is now the function of the local valuation courts.

14. Assessment committees also had, and exercised, the powers of obtaining the opinions of counsel on legal matters, of employing their own valuers to make independent valuations and of responding to appeals against the decisions of the committees to the courts of Quarter Sessions and the High Courts. Valuation panels have no such powers. The responsibility of advising the local valuation courts on all matters of law, valuation and procedure rests upon the person appointed as clerk of the panel, and local valuation courts are not parties to any proceedings on appeal against their decisions.

15. Valuation panels have no functions in regard to the hearing and determination of rating appeals. It is from the members of valuation panels that members are selected to serve on the local valuation courts.

16. Local valuation courts, constituted from members of local valuation panels, are responsible for hearing and determining all appeals against rating assessments in England and Wales. There are 102 valuation panels; 86 in England and 16 in Wales and Monmouthshire. The total rateable value of the hereditaments in the valuation list (on the 1st April, 1956, as a result of the revaluation) is £622,947,351.

CONSTITUTION OF LOCAL VALUATION COURTS

17. Local valuation courts comprise the chairman of the panel (or a deputy chairman) and two members of the panel selected in rotation by methods laid down in the various schemes. It is also provided that one deputy chairman may sit as a member of a court of which the chairman is the chairman of the panel. The Rating and Valuation (Miscellaneous Provisions) Act, 1955 (7th Schedule, Part I) has made more flexible the valuation court constitution by providing that it may, with the consent of all parties appearing before the court on the hearing of an appeal, consist of any two of the three members, i.e., the chairman (or a deputy chairman) and one member, or two members. This provision was made as a result of representations to the Ministry by the Society and a number of valuation panels, in order to meet any emergency arising by the failure of a member to attend a valuation court through unforeseen circumstances. If, however, a court so constituted is unable to agree on a decision, the appeal is re-heard by another valuation court.

VALUATION COURT PROCEDURE

18. All appeals (and accompanying documents) are transmitted by the valuation officer to the clerk of the panel (L.V.C. Regulations, No. 4) and all such appeals fall within the jurisdiction of the valuation courts, constituted from members of the panel, which can only be excluded by unconditional withdrawal or by agreement of all the parties entitled to be heard.

19. The chairman (or a deputy chairman) having fixed the date of hearing the clerk is required to give not less than fourteen days' notice of the date, time and place to the appellant and to every person who has served notice of objection. The clerk is also required to advertise the date, time and place by causing a

notice to be affixed to the office of the valuation panel and in some public or conspicuous place, within the area of the rating authority concerned, stating where a list of the appeals to be heard may be inspected. (L.V.C. Regulations, No. 5).

20. Unless the valuation court otherwise orders, on the application of any party to the appeal and upon being satisfied that the interests of either party would be prejudicially affected, the valuation court sits in public. (S. 48 (2) (*a*) L.G. Act, 1948.)

21. A valuation court may take evidence on oath and has power for that purpose to administer oaths. (S. 48 (2) (*b*).)

22. On the hearing of an appeal before a valuation court the following are entitled to appear and to be heard as parties to the appeal and to examine any witnesses before the court and to call witnesses: (S. 48 (2) (*c*).)

(*a*) the appellant; and

(*b*) the valuation officer, when he is not the appellant; and

(*c*) the owner or occupier of the hereditament to which the appeal relates, when he is not the appellant; and

(*d*) the rating authority for the area in which the hereditament in question is situated, when that authority is not the appellant; and

(*e*) in the case of an appeal against an objection, the objector, when he is not one of the persons aforesaid.

23. At the hearing of an appeal the appellant shall be entitled to begin and the other parties to the appeal shall be heard in such order as the court may determine. (L.V.C. Regulations, No. 7.) The procedure of local valuation courts (subject to these Regulations) shall be such as the court in question may determine. (S. 48 (2).)

24. Ministry circular 111/49, dated 16th December, 1949, which accompanied the Rating Appeals (Local Valuation Courts) Regulations, 1949, stated:

> "These Regulations have been designed to make the Court procedure as flexible as possible while preserving the essential rights of appellants. The Courts will, therefore, be able to conduct their hearings in the sympathetic atmosphere which has been characteristic of Assessment Committees and the Minister hopes that every effort will be made to achieve this. No attempt has been made to provide expressly for contingencies such as the reaching of a compromise between the appellant and the valuation officer after the lodging of an appeal. In such a case the Regulations leave the Clerk of the Panel free to advise the appellant that there is no need for him to appear at the hearing and then, if at the hearing, any other party who was entitled to be heard, but had not previously served any notice, appeared and objected to the compromise the Court could adjourn the hearing to give the appellant an opportunity of appearing."

25. At the hearing of an appeal the rating authority may appear by their clerk or other officer duly appointed for the purpose or by counsel or solicitor and any other person entitled to appear may appear in person or by counsel or solicitor or by any other representative: provided that no member of the local valuation panel from the members of which the court is constituted shall be entitled to act in relation to the appeal as representative for any person entitled to appear. (L.V.C. Regulations, No. 6.)

26. If any person entitled to appear does not appear at the hearing of an appeal, the court may, upon being satisfied that the proper notices have been served by the clerk, proceed with the hearing on the assumption that he does not desire to be heard. (L.V.C. Regulations, No. 8.)

27. There are occasions when a ratepayer, unable to attend the hearing, asks that his case be considered in his absence; such request is often accompanied by an amplification of the proposal or objection and these are read to the court and considered, together with the evidence of the other parties. In such cases, however, the clerk of the panel generally reminds the ratepayer that by his non-appearance he forfeits his right of appeal to the Lands Tribunal against the valuation court's decision. The notice of hearing, sent by the clerk to all parties,

states : " If you do not attend or send a representative, you will not be entitled to appear as a party to any appeal to the Lands Tribunal which may be made against the decision of the Court."

28. Requests for the adjournment of the hearing of an appeal are invariably granted and such requests are usually accompanied by the reasons. Valuation courts may also postpone or adjourn the hearing of any appeal for such time and to such place and upon such terms, if any, as may be thought fit, or may order that different questions arising in the appeal be heard at such different times and in such order or at such different places as to the court may seem expedient. (L.V.C. Regulations, No. 9.) In this connection a valuation court may, at the request of any of the parties, or by its own decision, view the hereditament and in the event of an adjournment for the purpose of inspection the parties and their witnesses are entitled to be present.

CONSIDERATION OF THE DECISION

29. By Regulation 10 (Local Valuation Courts Regulations, 1949) no person, being a party to an appeal or an employee or member of a body which is such a party or a person acting for such a party or a person called as a witness during the hearing, shall be present while the court is considering its decision on an appeal. Although this Regulation appears under the heading " Withdrawal of Parties, etc." it is generally the valuation court which retires to consider its decision.

THE DECISION OF THE VALUATION COURT

30. The valuation court, after hearing such persons as desire to be heard (para. 21 of this Memorandum) is required by s. 48 (4), Local Government Act, 1948, to give such directions as appear to the court necessary " to give effect to the contention of the appellant, if and so far as that contention appears to the court to be well founded ". The decision of the majority of the court shall be the decision of the court, except that when the court comprises two members only and those members are unable to agree on a decision, the appeal is re-heard by another valuation court. (L.V.C. Regulations, No. 11 and amendment by Rating and Valuation (Miscellaneous Provisions) Act, 1955.)

31. The decision of the court, embodying any directions, shall be in writing and signed by the chairman (L.V.C. Regulations, No. 11) or, in the case of a court of two, by the member acting as chairman. A copy of the decision, certified by the clerk, is sent by the clerk to every party to the appeal. (L.V.C. Regulations No. 11.)

RIGHT OF APPEAL AGAINST DECISION OF VALUATION COURT

32. There is a right of appeal by any person aggrieved by a decision of a local valuation court. Such appeal lies to the Lands Tribunal, and any person who appeared before the valuation court on the hearing may appeal against such decision within twenty-one days of the decision of the valuation court. Every notice of decision of a valuation court states clearly to all parties their rights in this connection, together with the address of the Registrar of the Lands Tribunal from whom form of appeal may be obtained.

33. Valuation courts have no power of response to appeals against their decisions as had assessment committees, but the clerk of the panel furnishes the Registrar with all relevant information relating to the date of hearing and the names and addresses of the parties who appeared before the local valuation court at the hearing of the appeal.

34. An appeal to the Lands Tribunal from a decision of a local valuation court is a hearing de novo and the decision of the Lands Tribunal is final on questions of fact, but any person aggrieved by such decision on a point of law may require the Lands Tribunal to state a case for decision by the Court of Appeal. A copy of the minutes of the valuation court and the court's directions (if any) is sent by the clerk of the panel (upon application) to the parties to any appeal to the Lands Tribunal.

THE VIEWS OF THE SOCIETY

35. The Society does not presume to speak for the chairmen and members of valuation panels, but in order to assist the Committee the observations of members of the Society have been obtained in the light of their experience officiating as clerks at some thousands of local valuation courts in England and Wales over the past six years.

36. In support of our submissions we set out hereunder an extract from the address of the Rt. Hon. Lord Ogmore, P.C., T.D., who presided as Chairman at the National Conference of Local Valuation Panels (convened by the Society) held at the Royal Festival Hall, London, on the 19th October, 1955, at which Conference chairmen, members and officers of valuation panels throughout England and Wales were present as delegates. Lord Ogmore (who is an Honorary Member of the Society) said:

> "Valuation Courts have established themselves with a measure of confidence, and in spite of the ordeal, have shown ratepayers that justice can be done without frills and formality. During the Committee stage of the Local Government Bill of 1948, a Member of the House of Commons said he believed that local valuation courts should be regarded as in some ways the 'custodians of public interests', and this appears to be the measure of responsibility which has been lived up to. Having thus established confidence in the new appeal system and allayed any doubts that the new Act set up a formidable barrier aimed at discouraging a ratepayer from exercising his right to a fair determination of his grievance, Valuation Courts can look to the Revaluation with the assurance that, given the necessary assistance, their task is not insurmountable."

37. The Minister of Housing and Local Government in a Message to the Conference said: "clerks of valuation panels, many of whom have a long record of service with the old assessment committees, have played a valuable part in establishing the reputation of the new panels for fairness and impartiality".

38. The Chairman of the National Union of Ratepayers' Associations, in introducing his Paper "Revaluation and the Ratepayer" to the National Conference of the Rating and Valuation Association, in October last, said: "I think the informality of the valuation courts is a very good thing and does help the ratepayer".

39. At the same Conference the Chairman of the North Middlesex Valuation Panel, in his Paper "Problems and responsibilities of Local Valuation Courts", said:—

> "It is, I think, very desirable that the valuation court should be a lay tribunal. The average appellant comes before the court because he feels he will not be fairly treated if the Inland Revenue's proposal or appeal is endorsed, and it is reassuring to him that his case will be heard before ordinary men and women—indeed, before his neighbours. Nevertheless, it is desirable that care should be taken in the selection of panel members. Everyone put forward for membership should have an intimate knowledge of the locality included in the panel area, and an outline knowledge of rating law and procedure, or the willingness to acquire such knowledge . . .
>
> The keynote of the court procedure should be informality and simplicity, but with sufficient dignity to enlist the confidence of the ratepayer. A large proportion of those who appear before it are ordinary folk who are not professionally represented, but who are not prepared to agree with the decision of the valuation officer . . ."

The speaker also referred to the need for assisting unrepresented ratepayers by explaining the court procedure and rating definitions, and continued: "This is, I think, essential if the ratepayer is to be able to present his case fairly. Many come to the court labouring under considerable misapprehensions. Some think the court is made up of Inland Revenue officials or members of their local rating authority. Others come quite unaware of the basis on which their assessment is made, and accordingly do not

know what evidence to bring in support of their contentions or how to present it. It goes without saying that the court must treat the parties with equal fairness. All discussions must take place in open court as required by law."

40. Members of the Society have given careful consideration to the possibility of bias in the constitution of local valuation courts, in so far as the presence of any person comprising the court might prejudice the rights of any individual appearing before the court on an appeal.

41. Disqualification at common law of a member of a valuation panel is modified by virtue of s. 67 of the 1948 Act. This does not relieve that member of disqualification under Valuation Court Regulation 10, where the rating authority appears as a party, and we would mention a small minority view that this regulation does not apply to a member of a valuation court who has actually heard the appeal. This position has necessitated the exercise of considerable vigilance on the part of the clerk of the panel as it often happens that a rating authority does not become a party to an appeal until the actual hearing, exercising its right to appear and to be heard in accordance with S. 48 (2) (*c*) without having served notice of objection. Generally the clerk endeavours to ascertain, in advance of the hearing, the intention of the rating authority in order to obviate the necessity of securing the services of another member to serve on the court at short notice.

42. It is felt that, to some extent, the latest provision, whereby a valuation court can now sit with two members instead of three, will render less difficult the matter of securing that a valuation court is properly constituted.

43. In our experience chairmen and members of valuation panels have always been fully alive to the possibilities of bias and have taken positive steps to avoid any criticism by any of the parties of the constitution of the valuation court. Many chairmen and members have expressly stated that they do not wish to sit on valuation courts hearing appeals from a rating area in which they serve as a local authority member.

44. We can confidently state that valuation courts have aimed at ensuring not only that justice should be done but that it should manifestly appear that justice is done. Where there has been no possible disqualification at common law members have deliberately refrained from sitting, their approach being not only whether a member of a court may be biased but whether any party to an appeal coming before them might consider a member likely to be biased.

45. We are not aware that any party appearing before the valuation courts has criticised or taken exception to the constitution of any court, and it is by no means an uncommon occurrence for a ratepayer—despite the fact that the court has confirmed his assessment—to express his thanks to the chairman and members of the court for the assistance afforded him and for a fair and impartial hearing.

46. The Society is confident that the present valuation court constitution and procedure affords all parties appearing on an appeal equal opportunities for presenting their case and ensures just determination of their differences without fear or favour.

CONTROL OF VALUATION PANELS

47. The Society ventures to draw the attention of the Committee to the degree of control exercised over valuation panels by the Ministry and which has caused some concern to chairmen, members and officers. The expenses of every valuation panel, including the expenses of the valuation courts, are defrayed by the Minister of Housing and Local Government out of moneys provided by Parliament. To assist the panel, the chairman thereof and the local valuation courts every panel shall appoint a person to be their clerk (s. 47 (1)) and may appoint such other officers and servants as they may, with the approval of the Minister determine, and may pay to them such salaries, allowances and other

remuneration as they may, with the approval of the Minister and the Treasury, determine. Every panel is deemed for the purposes of the Local Government Superannuation Act, 1937, to be a local authority.

48. The strict financial control exercised by the Ministry has prevented valuation panels and their courts from functioning with the same degree of independence as the former assessment committees, because such control leads to a direct interest in the functioning of the panels and courts.

49. Assessment committees precepted for their expenses upon the constituent rating authorities (subject to district audit) and were, therefore, entirely independent bodies. Valuation panels have no funds of their own to meet their needs, and are required first to seek the approval of the Ministry (which, on a number of occasions, has been refused) before incurring any expenditure considered necessary for the discharge of their functions.

50. All stationery and equipment are supplied by Her Majesty's Stationery Office. Whilst the economy of bulk purchase and supply is appreciated, and indeed the strict financial control exercised is no more than one would expect from a Government Department, members of panels who are members of local and county authorities and members of former assessment committees expect from their clerk a service similar to that afforded them in other branches of local government, and it is the fact that the valuation panels are so restricted that has led to certain criticisms and difficulty. The situation was particularly aggravated in 1952 and 1953, due to measures taken by the Ministry to cut the panel staffs (in many cases leaving only the clerk in office) when a number of officers were removed from office despite strong representations by the panels for their retention.

51. We would mention that there have been many instances where the Ministry has been most helpful and co-operative. We have appreciated that officers of the Department have had a duty to discharge and that it has been necessary to effect all possible economies.

52. We wish to make it clear that we are not making the point that there has been any bias or coercion by reason of the control exercised, but this fact has led to certain misgivings amongst valuation panels who feel it is not right that such a stringent control should be imposed upon valuation panels by the Central Government which is also responsible for the work of the Valuation Office of the Board of Inland Revenue (which is invariably represented as a party to all appeals which come before the valuation courts)—and particularly having regard to the fact that there is close liaison between officials of the Department of the Ministry and the Board of Inland Revenue.

53. In drawing attention to this matter we would mention that we understand representations have been made to the Minister by a deputation of chairmen of panels for a relaxation of this financial control. It is natural that both members and officers of the panels should be concerned lest any control might possibly restrict the proper functions of the valuation courts, in acting as independent and purely judicial tribunals, and more especially having regard to the fact that many parties appearing before the courts are under the impression that the court is a valuation officer's court and, therefore, part of the central machinery of valuation for rating. A relaxation of such control would therefore not only assist the courts in the discharge of their functions but would tend towards reassuring the general public that the courts are independent and unfettered by any control from the Central Government.

THE RIGHT OF RESPONSE TO AN APPEAL

54. We would draw the attention of the Committee to another aspect of valuation court procedure, in cases where an appellant ratepayer submits a written statement in lieu of attendance or representation before the valuation court.

55. The court is aware that if it decides (wholly or in part) in favour of the ratepayer in such circumstances, the valuation officer has the right of

appeal to the Lands Tribunal against such decision but that the ratepayer could not appear before the Tribunal. This is a factor which may affect the minds of chairmen and members of valuation courts; therefore, whilst it may be right that an appellant who does not appear before the valuation court, but who submits a written statement, should not be allowed to appeal against the decision of the court, it is the view of some of our members that he should be given the right to respond to such appeal by the valuation officer.

56. If the Committee does not assent to that view, then the point arises as to whether valuation courts should be debarred from considering the written statement of an absent ratepayer. It may be thought to be in the public interest that either the ratepayer should have the right to defend a concession given in his absence, or, alternatively, the Regulation noted in paragraph 26 should be amended to *require* the court to proceed on the assumption that non-appearance (or representation) means that the absent party does not desire to be heard. As a second alternative it may be considered that where a valuation court has given a decision in circumstances where an appellant ratepayer cannot respond to an appeal to Lands Tribunal by the valuation officer, the valuation court should be given the right to appear by its clerk before such Tribunal and submit the instructions of his court in support of its decision.

IN CONCLUSION

57. The Society will be pleased to give any further evidence to the Committee, if desired, and for its officers to appear before the Committee to amplify the submissions made in this Memorandum.

Welsh National Party (Plaid Cymru)

MEMORANDUM ON THE WORKING OF THE NATIONAL SERVICE ACTS IN RELATION TO CONSCIENTIOUS OBJECTORS IN WALES

Plaid Cymru is against Military Conscription imposed by the Westminster Government. A politically responsible nation would decide whether it would have compulsory military service, and if it did, would set up its own tribunals. At present, Wales suffers the indignity of having conscription imposed upon it by its powerful neighbour, and of having Anglicised tribunals to consider the validity of the pleas of Welsh Conscientious Objectors.

Plaid Cymru offers, moreover, a six-fold criticism of the National Service Acts and their workings:

(1) The limitations placed by the Welsh local tribunals on their jurisdiction to entertain applications for registration.

(2) The limitation placed by the Act itself on the control of Tribunals by Courts of Law.

(3) The refusal to set up a Welsh National Appellate Tribunal.

(4) Procedure at Tribunals.

(5) The Constitution of the Appellate Tribunal for hearing appeals under S. 20 of the 1948 Act.

(6) The absence of any provision enabling men in the various military reserve forces to register as Conscientious Objectors.

(1) and (2)

The Welsh local Tribunals have consistently held that it is not open to them to grant exemption to objectors, however sincere, whose ground of objection (*a*) to inclusion in the military service register, and/or (*b*) to military service, is political. This in practice means that all Nationalist objectors are refused registration in the objectors' register, and must face prison if they persist in their objection. There is nothing in the Act which justifies such an interpretation.

Most English tribunals, to their credit, recognise political objection, and in the case of *Chris Rees* the Appellate Tribunal assented to a submission to this effect.

But this ruling by the Appellate Tribunal is of little value, for three reasons:

(*a*) The decisions of the Appellate Tribunal do not bind local tribunals.

(*b*) Once an adjudication has been made to place an applicant on the register of C.O.'s, or to remove his name from the register, such decisions cannot, by the provision of the Acts, be called in question by any Court of Law.

(*c*) The only possibility of challenging the Welsh Tribunal's erroneous views as to jurisdiction is to confront them with that issue alone, and, in the meantime, to refuse to be drawn into the merits of the case, and then to take them to the Divisional Court of the High Court by way of one of the prerogative orders. This will need careful preparation and legal guidance throughout. There is no reported case where such a course has been adopted in the whole period of 18 years since the passing of the National Service Act.

A personal approach by Mr. Dewi Powell, LL.B., to the ex-Minister of Labour, Sir Walter Monckton, asking him to give a direction to local tribunals concerning the recognition of political objection proved fruitless. The tribunals, both local and appellate, are a "law unto themselves", and the Welsh tribunal, in particular, acts on the assumption that the limited immunity from being questioned given to its decision by the Act is of general application.

(3)

There was at one time an Appellate Tribunal for Wales. It is most unfortunate that it should have been abolished. The experience of the majority of Welshmen who have appeared before the London Appellate Tribunal is that it is wholly ignorant of Welsh life, history, and feeling, and it is most exasperating to find appellants being cross-examined about elementary facts which are known to, and taken for granted by, all in Wales.

The ex-Minister of Labour, Sir Walter Monckton, was approached on the question of the re-establishment of a Welsh National Appellate Tribunal, but he refused, on the ground that appeals were too few. This is hardly a valid objection, since the Appeals Tribunal is an *ad hoc* body, and not in permanent session.

(4) Procedure

(a) *Generally*

In some respects the Tribunals show an undue regard for formality.

There is often annoyance when an appellant enlarges on his written statement, which, at best, can only be expected to be an outline of his case. There must be freedom to explain and to enlarge upon the original statement. He can be cross-examined on discrepancies.

On the other hand, informality, verging on impudence, is exhibited by some members of the tribunal. (Mr. Emrys Roberts records the following "lecture" by the late Judge Walter Samuel to a young man from the country who had only had a very inadequate schooling in English, his second language:

> "Your grammar is terrible, boy; why don't you speak more correct English? . . . Where on earth were you brought up? You don't seem to have been educated at all, you can't even speak properly."

No attention worth mentioning was paid to his conscience, and the appellant was rejected, not so much on grounds of an invalid objection to military service as on grounds of "inadequate" education. The same day, Mr. Bobi Jones, M.A., a graduate of the University of Wales was subjected to the same kind of discourteous treatment, *until the presiding judge realised that here, at least, inadequacy of language was absent.* Mr. Roberts is convinced that though on conscientious grounds, the second case was unexceptionable, he was granted exemption *not* on those grounds, but because he was academically brilliant).

(b) *Decisions*

Decisions should be communicated in open court as are the decisions of the Magistrates in Magistrates' Courts. If the Court wishes to adjourn to consider its decisions, all well and good, but the reasons for the decision should be available, and in a matter where, in one sense, the *bona fides* of the applicant is at stake, any dissenting view should be expressed.

(c) *Language*

Provision should be made for at least one Welsh-speaking panel, so that the whole of the hearing and of the judgment can be in Welsh. The Welsh National Appellate Tribunal should consist of Welsh-speaking persons, or, if there is a non-Welsh-speaking member, a thoroughly competent interpreter should be provided.

(d) Application for striking off an objector from the register, who has already been registered. Although uncommon now, they were common during the war. These should be treated on the same footing as criminal trials; the evidence must be *admissible evidence* only, and the burden of proof should be laid entirely on the party applying for the removal of the objector's name.

(5)

The Appellate Tribunal hearing appeals from objectors sentenced to 3 months' imprisonment or more for failing to submit to medical examination is the same body as the Ordinary Appeals Tribunal. When the Appellate Tribunal has rejected an appeal, the appellant may appear, only a few weeks later, before the same tribunal under Section 20, a tribunal sitting in judgment on its own judgment. This is contrary to accepted principles of natural justice.

(6)

At present, former servicemen "on the reserve" have no legal right at all to become Conscientious Objectors. In practice, they may disobey a command, and, having undergone a sentence of 3 months' detention, they may apply to the Appellate Tribunal. This, of course, is the same Tribunal as defined in Section 20. This would mean that it is virtually impossible for a Welsh Nationalist even to register as a C.O.

RECOMMENDATIONS

A. **Administrative**

1. The Welsh local tribunal should be entirely reconstituted. There should be at least one Welsh-speaking panel.

2. Due notice of forthcoming meetings should be given on local and national levels, on the radio and in the newspapers.

3. Forms for conscientious objection should be available in Welsh. The Ministry of Lahour would then be pre-warned when to summon an all-Welsh tribunal.

4. There should be re-established forthwith an Appellate Tribunal for Wales.

5. The Appellate Tribunal under Section 20 should not be composed of the same persons as the ordinary Appelate Tribunal. Appeals by reservists should be heard by the same Appellate Tribunal as the one sitting to hear Section 20 Appeals.

B. **Legislative**

1. The Acts should be amended to provide for appeals by way of case stated to the Divisional Court of the High Court from the decisions of local and appellate tribunals. The tribunals' discretion as to questions of fact would not be interfered with, but they would be subject to the control of the Courts both as to law and to their conduct.

2. Procedure in the matter of the hearing of ordinary applications for registration and of special applications for removal of an objector's name from the

register should be governed by Rules made under the Act. The Act must be amended to make this possible. The same applies to the giving of oral decisions. Rules as to special applications should provide for Ordinary principles of evidence in criminal cases to be observed.

3. The Acts should be amended to provide an opportunity for men on the "reserve" to register on a provisional register of Conscientious Objectors without first having to undergo court-martial and detention.

Youth Hostels Association

STATEMENT ON ADMINISTRATIVE INQUIRIES SUBMITTED BY THE YOUTH HOSTELS ASSOCIATION (ENGLAND AND WALES)

1. Types of Inquiry and Appeal with which the Y.H.A. is concerned

The Y.H.A. is concerned, as an important part of its objects, to secure the preservation of the countryside and of public access (and the extension of access) thereto.

Accordingly, it is frequently represented at public inquiries, hearings and appeals coming within that part of the Committee's Terms of Reference which concerns "the working of such administrative procedures as include the holding of an Inquiry or Hearing by or on behalf of the Minister on an appeal, or as the result of objections or representations".

Examples of the types of inquiry of which we have experience are:—

(*a*) Appeals under the Survey of Rights of Way provisions of the National Parks and Access to the Countryside Act, 1949 (Section 29);

(*b*) Inquiries into the designation of National Parks:

(*c*) Planning Appeals under the Town and Country Planning Act, 1947 (Section 16).

2. Value of Administrative Inquiries

We do not wish to criticise adversely the framework and intention of the present system. We feel that it has considerable value as a means whereby a Minister may inform himself of the views of interested parties. Its cheapness in comparison with judicial procedures is in itself a merit—and one much appreciated by individuals and societies whose voice, were it otherwise, might not be heard.

The following comments are therefore concerned only with those principles and points of detail within the present system where, in our view, change or clarification would serve to improve it. In framing them we have had in mind the two ends which the system should serve, best expressed perhaps in the maxim: "justice must not only be done but manifestly and openly be seen to be done".

3. Recommendations

(i) *Uniformity of Procedure.* There should be a uniform procedure to be followed at Inquiries of similar type, and persons attending should be provided with a statement outlining such procedure. This is not a request for greater formality. We are in agreement with the views already expressed to the Committee by the Treasury Solicitor on the advantage to the ordinary person of some degree of informality. But the ordinary person (who can usually be correctly presumed to be unfamiliar with the environment of an Inquiry) is not helped, and may be handicapped, by uncertainty as to what is to take place and when.

(ii) *Title to Appear.* In addition to those with an obvious right to make representations by reason of an established interest, it is important to preserve the "locus" of general public interest. Thus we find, in considering the questions of amenity, that our interest in a matter is by no means proportionate to its proximity to one of our youth hostels; nor is it necessarily proportionate to the numbers of our members who visit the area at the present time. We welcome

the broad interpretation of "locus" now generally permitted in practice. Its preservation is of importance in modern conditions in giving opportunity for the hearing of certain widely representative points of view.

(iii) *Representation.* The existing practice which, in addition to legal representation, permits a party to be represented by a non-legal "friend" or expert, is of value and should be confirmed.

(iv) *Right to Cross-examine.* Any person giving evidence at an Inquiry should be permitted to cross-examine other parties and it should be made clear to all that an opportunity to do so will be provided.

(v) *Written Statements.* Adequate consideration of written representations should be ensured. Parties should be encouraged to furnish other parties in advance with a copy of any written statement they submit to the Inquiry. This is already practised in some instances, and it is clear that the courtesy is appreciated. If generally adopted it should serve to expedite proceedings.

(vi) *Evidence of other Government Departments.* Other Government departments intending to make representations to a Minister should be required to make their views known at the Inquiry, except in those few cases where danger arises that national security might be prejudiced.

(vii) *Appointment of Inspectors*

(a) *General.* A Minister should have full discretion as to whom he appoints as an Inspector. Where he appoints someone other than one of his own officers, such person should not necessarily (as has been advocated in some quarters) be a lawyer.

(b) *Inquiries Involving Planning Consent.* In all cases where planning consent is sought, inspectors should be appointed only by the Minister of Housing and Local Government, irrespective of the fact that the Inquiry may concern other Ministries.

(viii) *Inspectors' Reports.* We appreciate the strength of the arguments on both sides as to whether or not inspectors' reports should be published. Theoretically the Minister would inform himself directly by attending Inquiries in person. In practice he usually informs himself through an intermediary and, even without imputing any wrong motive to the official concerned, doubt must always arise both as to the degree of objectivity achieved in the reporting and as to the possibility of errors or omissions. Everything hinges on the Minister having informed himself correctly, and the readiest way to remove apprehension on the point among parties or the public generally would be to publish Inspectors' reports. But this would not in all cases fully illuminate the Minister's decision, which may be based partly on other information in the file. In such cases the decision might well be at variance with what a reasonable person would concur in from the facts in the published report. This could only result eventually in the whole valuable system falling into disrepute.

On balance, therefore, we do not think it necessary or advisable to publish Inspectors' reports but would substitute a strong recommendation that there should be put upon the Minister:

(*a*) a duty to state his general policy on all matters which are frequently the subject of a Public Inquiry;

(*b*) a duty, in announcing his decision, to state the facts which he has considered, together with his reasons for deciding one way or the other —(such a statement becomes more acceptable the more it shows sympathetic understanding of all points of view).

(ix) *Appeals.* We do not consider that appeals to the Courts against Ministers' decisions should be permitted. To do so would be to defeat the purpose for which the system of tribunals was established, and would unduly favour wealthier parties who would come to regard the tribunal proceedings merely as a preliminary to action in the Courts.

(x) *Notice of Inquiries.* Inquiries should be adequately publicised, and as much notice as possible should be given to persons who have notified that they are interested.

(32808) Wt. 4634—7 K4 3/57 D.L.

COMMITTEE ON ADMINISTRATIVE TRIBUNALS AND ENQUIRIES

APPENDIX II

TO THE
MINUTES OF EVIDENCE

Supplementary memoranda submitted by witnesses who gave oral evidence

LONDON
HER MAJESTY'S STATIONERY OFFICE
1957
PRICE 2*s.* 6*d.* NET

CONTENTS

Note: Most of the memoranda contained in this Appendix were submitted in response to questions put in oral evidence. Those marked with an asterisk were submitted in response to a letter from the Committee, dated 26th October 1956, inviting certain Government Departments to comment on criticisms made by non-Government witnesses. The reply of the Ministry of Housing and Local Government is not printed here but was published in the *Minutes of Evidence* Days 25–26, pp. 1138–9.

Ministry of Agriculture, Fisheries and Food

Statements of Case to Agricultural Land Tribunals under Part II of the Agriculture Act, 1947

Lord Linlithgow asked (Days 3–4, Q. 785–9) why instructions to County Agricultural Executive Committees said that, in proceedings before Agricultural Land Tribunals proposing dispossession, the reports of inspections of the farm by committee members were privileged documents and should not be produced before the Tribunal, nor should the word "report" be used in Statements of Case which the regulations require the Committee to put in.

The purpose of the note was twofold. Firstly, to secure the observance of the rule that reports of this sort to a Minister are confidential documents belonging to a class of document which should not be disclosed. This principle is established in the well-known decision of the House of Lords in *Duncan* v. *Cammell Laird & Co., Ltd.* (1942) 1 All E.R. 587. Secondly, to explain to county land agents preparing Statements of Case to tribunals how, without running into difficulty over that rule, they could make the Statement of Case a comprehensive and factual story. Therefore the first part of the note says that reports are privileged documents, and they should in no way be referred to in the Statements of Case.

The second part of the note explains that although reports must not be referred to, all facts which the inspecting members of the committee observed at their inspection of the farm, including comments on the conditions of the land or stock, can properly be included in or attached to the case. Whereas the report to the Minister would be no more than hearsay evidence, the facts and conditions observed by the inspecting members of the Committee who will in all probability be giving evidence of such observed facts and conditions before the Tribunal can and should be incorporated in or attached to the Statement of Case to the Tribunal.

It is not a question of suppressing evidence, but of the form in which evidence is to be presented in the written Statement of Case. This written statement will be supported by oral evidence given before the Tribunal.

E.A.H.

12th March, 1956.

Compensation following dispossession

Lord Linlithgow asked (Days 3–4, Q. 790–792) about compensation to a dispossessed tenant and owner-occupier.

1. A tenant whose tenancy is terminated by the Minister under section 17 (1) (*a*) of the Agriculture Act, 1947, for bad husbandry, is entitled under sub-section (5) of that section to compensation under the Agricultural Holdings Act, 1948, as on a normal termination of tenancy, but excluding compensation for disturbance. This corresponds to the ordinary case of termination of a tenancy by notice to quit from a landlord who has obtained a certificate of bad husbandry, see section 34 of the 1948 Act.

2. Where an owner-occupier is dispossessed for bad husbandry and required under section 17 (1) (*b*) of the 1947 Act to give up his occupation of the land and let it to a tenant approved by the Minister, the procedure for compensation differs according to whether the dispossessed owner-occupier is, or is not, able to find a tenant acceptable to the Minister.

If he can do so, there is no need for statutory provision for compensation, because the dispossessed owner-occupier in letting to the new tenant will make his own terms with him, and is entitled to, and will receive from him, the usual ingoing valuation. In this respect, in present circumstances, he is in a strong position.

But if he is not able to find a tenant acceptable to the Minister, section 18 of the 1947 Act gives the Minister power to take possession of the land for the purpose of farming it either himself or by a "tenant" put in for the purpose. If this has to be done in order to secure that the farm is not lying idle, subsection

(3) of section 18 provides for ascertaining the amount which might reasonably have been expected to be payable by an incoming tenant in respect of the usual matters such as seeds, tillages, growing crops, etc., and also the cost of carrying out any work which the late occupier ought to have done to put the land into good tenantable condition, and the difference between these two is either payable by the Minister to the late occupier, or recoverable by the Minister from him. In default of agreement the amounts are determined by arbitration under the Agricultural Holdings Act, 1948.

3. Dispossession on grounds of bad estate management under section 16 of the 1947 Act is effected by compulsory purchase of the land by the Minister under the powers given to him for that purpose by the section, and compensation is paid accordingly as on any compulsory purchase of land.

E.A.H.

12th March, 1956.

AGRICULTURAL LAND TRIBUNALS

Statement of Cases Heard from 1st March, 1950, to 28th February, 1955(1)

NOTICES TO QUIT

Province	Number of Cases Heard	Dismissed			Allowed			Otherwise dealt with(2)
		Total	Against consent given	Against consent withheld	Total	Against consent given	Against consent withheld	
Northern ...	80	55	19	36	24	18	6	1
Yorks. ...	125	82	18	64	41	31	10	2
Lancs. ...	64	51	11	40	12	8	4	1
East Midland	177	121	45	76	51	33	18	5
Eastern ...	142	97	31	66	42	26	16	3
South Eastern	238	175	64	111	57	31	26	6
South Western	172	103	34	69	66	47	19	3
West Midland	203	151	64	87	49	19	30	3
Wales ...	122	86	30	56	35	14	21	1
Totals ...	1,323	921	316	605	377	227	150	25

CERTIFICATES OF BAD HUSBANDRY

Province	Number of Cases Heard	Dismissed			Allowed			Otherwise dealt with(2)
		Total	Against certificate granted	Against certificate refused	Total	Against certificate granted	Against certificate refused	
Northern ...	3	1	—	1	2	2	—	—
Yorks. ...	15	8	5	3	7	3	4	—
Lancs. ...	6	4	4	—	1	1	—	1
East Midland	21	14	10	4	7	5	2	—
Eastern ...	6	4	3	1	1	1	—	1
South Eastern	16	11	7	4	3	3	—	2
South Western	14	8	7	1	6	3	3	—
West Midland	21	13	11	2	8	6	2	—
Wales ...	6	5	1	4	1	—	1	—
Totals ...	108	68	48	20	36	24	12	4

(1) These figures were submitted in response to Questions 813-814 (Days 3-4).

(2) These cases include those where the landlord and tenant reached agreement after the hearing and so no decision was given; cases where the tribunal considered that they had no power to act; and cases adjourned sine die.

PROPOSALS FOR DEVELOPMENT OF AGRICULTURAL LAND

(The following note relates to Q. 838–845, Days 3–4)

I. Arrangements for notification of Owners and Occupiers

1. The Ministry is consulted by local planning authorities and by other Government Departments on proposals to develop agricultural land. Before advising, officers of the Ministry usually need to inspect the land, and this note sets out the arrangements adopted by the Ministry for notifying owners and occupiers.

2. The following introductory points should be noted:

(i) A planning permission is not concerned with questions of ownership and occupation, or with any of the many steps which may have to be taken before it can be acted upon. Local planning authorities are not required to notify owners and occupiers of applications for planning permission.

(ii) The Ministry's function in land use matters is to advise on the broad agricultural implications of proposals for the development of agricultural land.

3. Officers of the Department, visiting farms for the purpose of advising on proposals for development, either make appointments or see the farmer or the person in charge before proceeding. Before 1952 they did not give occupiers any detailed reasons for the visit. The practice was to explain that the visit was in connection with certain proposals for development and to add, if asked, that the Department was not at liberty to disclose the nature of the proposals. This practice was adopted because it was not part of the Ministry's responsibilities to notify agricultural owners and occupiers, and if it had done so, such owners and occupiers would have been placed in a better position than those concerned with non-agricultural land.

4. This practice still applies to *private* development proposals. But a special arrangement for notification of *public* development proposals to owners and occupiers has been in force since 1952 following on representations from the agricultural organisations. A department or authority having compulsory purchase powers is in a very different position vis-à-vis owners and occupiers from a private developer who seeks planning permission for land which he does not own. One of the arguments of the agricultural organisations was that, if owners and occupiers could be notified authoritatively at an early stage about proposals for development by bodies with compulsory purchase powers, it would help to dispose of frequent vague rumours which caused alarm and uncertainty and tended to interfere with production plans.

5. Following on these representations, and after consultation with other Departments and (through the Ministry of Housing and Local Government) the Local Authority Associations, the Ministry decided in 1952 that while it could not accept any general obligation to notify owners and occupiers of public development proposals affecting their land, it would be prepared to notify them in cases where special inspections of the land were necessary to enable agricultural advice to be given. Special inspections are in fact necessary in the case of most public development proposals.

6. This arrangement for notification does not apply to proposals classified as "secret" or "confidential", or to proposals of local authorities if the Authority itself prefers to notify the owner and occupier in the first place. Where the land of several owners and occupiers is involved and there is likely to be difficulty or delay in getting into touch with all of them, the larger interests only may be notified. Where ownership cannot readily be ascertained the occupier is notified and asked to inform the owner.

II. Disclosure of Agricultural Advice and Giving of Evidence

7. The Ministry of Agriculture does not disclose to an applicant for planning permission to develop agricultural land the nature of the advice which it proposes to give to the local planning authority on his application. The effect of the proposed development on agricultural interests is only one of a number of factors

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which the local planning authority has to take into account in reaching a decision on the application. The local planning authority consults other bodies, whose advice is not disclosed. The disclosure of the Ministry's advice to third parties before the authority had the opportunity to consider it would therefore not only create a one-sided impression but place the planning authority in an embarrassing position.

8. An arrangement has, however, been in force since 1950 under which, where a planning application is refused primarily on agricultural grounds, an officer of the Ministry will, if requested by the local planning authority, attend a meeting with the appellant to explain the agricultural objections in detail. The meetings may prevent the necessity for an appeal. Even where no agreement is reached, and the appellant decides to proceed with his appeal, he does so with full knowledge of the detailed agricultural objections to his proposed development, and has the opportunity at the appeal hearing of stating his reasons for disagreeing with them.

9. It has, however, been contended that knowing the arguments in advance is not sufficient, and that persons affected by planning decisions are placed at a disadvantage because the Ministry, in accordance with the general practice of Government departments, does not give evidence at hearings held by other Government departments. It has been argued that appellants should certainly be able to cross-examine officers of the Ministry in planning appeal cases, where the appeal is against a refusal of planning permission based wholely or mainly on the agricultural advice given by this Ministry. It has also been suggested that the Ministry should go even further, and make officers available to give evidence at any public inquiry affecting the use of agricultural land, even where the proposal or decision under inquiry did not flow from advice given by this Ministry.

10. The first class of case consists primarily of planning appeals where planning permission has been refused wholly or mainly on agricultural grounds. In refusing permission, the local planning authority will have relied mainly on the advice given by officers of this Ministry. The local planning authorities are anxious that the Ministry's officers should be available to give expert evidence on their behalf so as to substantiate their planning decisions. The appellant is also anxious to be able to test the advice given by the Ministry by cross-examination. There is undoubtedly a strong argument that where a decision has been based on the Ministry's advice, officials of the Department should be prepared to substantiate that advice by giving expert evidence on the relevant technical factors.

11. The second class of case consists primarily of inquiries into compulsory purchase orders initiated either by a local authority, or by another Government department. At this inquiry stage the Ministry is normally no longer directly interested since the appropriate use of the land in the national interest will usually have been settled at the earlier planning stage. At that stage the Ministry may have advised the planning authority that it sees no objection to the proposed development of the land; alternatively the Ministry may first have objected and later withdrawn the objection because, after consideration, possibly at Ministerial level, it was decided that other factors outweighed the agricultural objection.

12. At the inquiry into the compulsory purchase order the objector may seek to base his case on the value of the land for agricultural purposes; and he will be faced with the fact that the Ministry of Agriculture did not object to the proposed development. It has been argued that in such a case the objector should be free to require the attendance of Ministry officers to give evidence, and be cross-examined, presumably on the reasons why no agricultural objection was raised.

13. Such evidence could easily lead to the cross-examination of officials on questions of policy which had been the subject of Ministerial decision. On the other hand, if an attempt were made to limit any evidence to the technical facts (e.g. the quality of the land, the effect of the proposed development on the farm unit, etc.) this might be misleading in some cases; it could give the impression

that the Ministry were opposed to the development whereas in fact the Department had recognised that the agricultural objections, strong as they were, must yield to other considerations in the wider national interest.

14. For these reasons the arguments in favour of Ministry officials giving evidence are considered to be far more cogent in the first class of case where the inquiry is into a decision which has directly resulted from the agricultural advice given by the Ministry. Moreover, such evidence could be confined to the technical facts, which would be the basis of the advice given. In the second class of case, it would be far more difficult to confine any evidence to the technical facts since the advice given may have been based on other considerations. But if evidence were to be widened to cover policy questions, which are the responsibility of Ministers, there would be constitutional difficulties and officials would be placed in an awkward position.

A.R.M.

4th May, 1956.

COMMENTS ON EVIDENCE OF OTHER WITNESSES

1. This note, prepared in response to the letter of 26th October from the Committee, comments on certain suggestions affecting the Ministry that have been made in evidence to the Committee by other bodies and persons. It does not, except incidentally, comment on broader issues raised in evidence that affect Departments generally.

Agricultural Land Tribunals

2. As a result of modifications introduced by the Agriculture (Miscellaneous Provisions) Act, 1954, these tribunals largely conform with the main suggestions made in evidence to the Committee. The tribunals have an independent legal Chairman appointed by the Lord Chancellor and the members are appointed by the Chairman from a panel constituted by the Lord Chancellor. There is an appeal to the Courts on questions of law. Although not required to do so by Statute, Tribunals have been asked by the Minister to give reasoned decisions and we understand that, in practice, they do so. Legal representation is allowed; and hearings are in public unless the applicant objects.

3. The Ministry attaches importance to the specialist character of the work of these Tribunals, and to the continued appointment to them of farmers and landowners selected from a panel by the Chairman of the Tribunal. It would not support the suggestion that the work should be transferred to the Land Tribunal with a wider and essentially different range of functions, largely relating to urban property.

Other tribunals

4. The only other tribunals with which the Ministry is concerned are the Milk and Dairies Tribunals. Their function is to consider objections made by a milk producer to the grounds given by the Minister for proposing to refuse or cancel registration as a dairy farm or dairy farmer. The question is whether the Milk and Dairies Regulations can be, or are being, complied with. Inspection of the premises is almost invariably necessary. The issues are highly practical and are ultimately related to good dairying technique. The final decision rests with the Minister. The Ministry would not regard it as necessary or appropriate to require that the Chairman of these Tribunals should have legal qualifications.

5. The Ministry does not regard the Agricultural Executive Committees as Tribunals in the sense in which the term is commonly used. They act either as executive agents of the Minister or exercise an appeal function delegated to them. They are therefore acting on behalf of the Minister.

6. The chief procedural issue raised in evidence by more than one body is that the making of a supervision order should be subject to an appeal to the Agricultural Land Tribunal. This is not a new point: indeed it was pressed quite strongly when the Agriculture Act was under discussion in 1946–7. The view

then taken by the Ministry was that supervision is not so much a penal measure as an essential step in the process of helping and advising the farmer or landowner to improve his standard of farming or management. He has full opportunity to make representations to the Executive Committee and discuss the case with them before they decide whether an order should be made. To provide for a formal appeal would overload Trihunals with work that was not strictly necessary, hearing in mind the provision for appeals against any proposal to proceed to dispossession and any directions to provide expensive fixed equipment. Experience gained since the Act was passed has not caused the Ministry to alter its earlier view, which is now believed to he shared by some of the more important organisations representing the industry.

7. It is accepted that parties should have proper notice of proceedings and the case they have to meet.

Inquiries relating to land—Departmental evidence

8. In its supplementary memorandum of evidence dated 4th May, 1956, the Ministry has already covered the main issues raised hy other hodies and persons. It has agreed in principle that, where a planning authority, chiefly in view of advice given by the Ministry, rejects a proposal for development, and an appeal is made, the Ministry's local officer should be available at the Inquiry to give evidence on questions of fact.

9. A clear distinction must, however, in the Ministry's view, he drawn hetween that type of case and, for example, the case where, with the Ministry's agreement or acquiescence, planning consent is given to a proposal for development hy a puhlic authority and, following on that consent, a compulsory purchase order is made.

10. The decision on an application hy a public authority for consent to develop is a collective decision hy or on hehalf of the Minister concerned. At some stage the Minister or his officials on his hehalf may have objected to the proposal on agricultural grounds, but have decided ultimately not to press the ohjection in the light of considerations advanced by or on hehalf of other Ministers. The Ministry feels that it would be contrary to constitutional practice for an officer of one Department, not having co-ordinating functions, to be called upon to explain, as is apparently desired, the grounds on which his Minister, or those acting for him, agreed to such a collective decision.

3rd December, 1956

MILK AND DAIRIES TRIBUNALS

1. This note deals with the points raised by Sir Oliver Franks and Lord Justice Parker on 19th Decemher, 1956 (Days 25–26, Q. 5857–5864).

2. During the time when Milk and Dairies Regulations were administered hy local authorities, the authorities were bound to register a dairy farm on application but had no power to cancel the registration. The only means of enforcing the statutory requirements was to prosecute the dairy farmer for not complying with the Regulations.

3. The Food and Drugs (Milk and Dairies) Act, 1944, which became law on 1st October, 1949, empowered the Minister to refuse or to cancel registrations if the conditions of milk production were unsatisfactory. When the Bill was introduced it provided that the dairy farmer might make representations to the Minister, hut there was no appeal machinery. Shortly hefore the Committee Stage, however, it was agreed hy the Ministry, the National Farmers' Union and the Milk Marketing Board that it would be appropriate to provide means whereby a case could be referred to an informal trihunal before the Minister reached a decision, and an amendment was introduced at Committee Stage to that effect. It was intended that the tribunals should consist of one memher selected from a panel nominated by the National Farmers' Union, one from a panel nominated by the Milk Marketing Board, while the Chairman would be a superintending veterinary officer of the Department.

4. The tribunals as they are at present constituted have no powers of recommeodatioo. Their purpose is "to determine whether the objections are made out and, if not, on which of the grouods in respect of which they are made, they are not made out." The determination of the tribunal is reported to the Ministry of Agriculture, Fisheries and Food in writing.

5. There was also considerable criticism at Committee Stage of the ioclusion of an officer of the Ministry on the tribunals, and the Minister undertook to provide by Regulatioo for the Chairman to be, instead, a man of good public repute, not himself a milk producer, but having an interest in agriculture as well as in public affairs.

6. The provision of the present tribunals before which a producer makiog objections has a statutory right to appear at a public hearing, but with the final decisioo still left with the Minister, appears therefore to have been a compromise between the original proposal that there should be no independent appeal machioery and the wish of the critics of the Bill that the fioal decision should rest with an independent body.

7. Another reason for the inclusion of tribunals in the machinery of administration, as a means of establishiog and assessing the facts of a case, was that the Regulations are in part and of necessity fairly widely drawn. There are, therefore, points oo which the facts, or their interpretation and significance in relation to the requiremeots of the Regulations, may be legitimately in dispute between the Minister's officers and the milk producer. Means were therefore provided whereby the Mioister could be placed io possession of an independent assessment of the facts before reaching a decision to refuse to register or to cancel the registration of a dairy farmer, and thus to prevent him from producing milk for sale for human consumption.

8. In addition to the right of appeal to the tribunals the farmer has a right to make representations to the Agricultural Executive Committees before aoy action is taken, and it is only after these representations have beeo made, or the time for making them has expired, that the Committees report their conclusions to the Minister. The Minister may not accept these conclusions. Little use has been made of the tribunals since there have been only 54 references to tribunals sioce 1st October, 1949. There have been 2,060 cancellations and refusals of registrations.

9. The present system is based upon the fact that statutory responsibility for decisions io these cases now rests with the Minister and that there is no right of appeal against those decisions other than the traditional recourse to Parliament.

The alternative would be, by amending legislation, to relieve the Minister of this responsibility and to place it instead :—

(i) Upon the present Tribunals. This would give them wide powers, against the exercise of which there would be no appeal, in the field of clean milk production and public health, or perhaps

(ii) Upon the local authorities (as was the position in England and Wales before the 1st October, 1949, and still is in Scotlaod) who would then again be responsible for policing the regulations, prosecuting in the Courts for non-compliance with, of course, a right of appeal to a higher Court.

25th February, 1957

Ministry of Education

COMPULSORY PURCHASE ORDERS

Analysis of time taken at each stage between lodging of first objection and announcement of Minister's decision

Note: Submitted in response to questions 97–100 and 127 (Days 1–2). The following table covers the Ministry's 19 cases on which a public enquiry was held in 1954.

(1)	Number of weeks: Between receipt of first objection and appointment of Surveyor (2)	Between appointment of Surveyor and date of P.I. (3)	Between P.I. and receipt of Surveyor's report (4)	Between receipt of report and Minister's decision (5)	Total (6)
Case A ...	3	13	3	17	36
,, B	6	5	7	11	29
,, C	6	4	3	8	21
,, D	5	5	2	1	13
,, E	8	4	2	2	16
,, F	7	9	9	37(1)	62
,, G	3	6	3	3	15
,, H	15	19	1	3	38
,, I	4	15	1	2	22
,, J	5	27	1	2	35
,, K	7	9	3	6	25
,, L	3	9	3	2	17
,, M	6	5	9	3	23
,, N	8	9	13	2	32
,, O	12	10	7	13	42
,, P	9	5	2	12	28
,, Q	7	5	1	4	17
,, R	4	12	5	5	26
,, S	3	8	1	35(2)	47
Average of all 19 cases ...	6	9	4	8	29

(1) Here the delay was chiefly due to negotiations (which followed the recommendation made by the surveyor in his report) between the local authority and one of the objectors concerning an adjustment to boundaries.

(2) The long period which elapsed before the Minister was able to give his decision was due to a number of enquiries and consultations which had to be made particularly as to the suitability of the proposed site in view of the existence nearby of electric high tension cables.

COMMENTS ON EVIDENCE OF OTHER WITNESSES

Comments on certain points raised by the Inns of Court Conservative and Unionist Society in their evidence (Days 9–10)

1. **Public hearings of tribunals**

In reply to Questions 2110 and 2111 Sir Patrick Spens said that the Society felt that, prima facie, hearings of tribunals ought to be in public; but he conceded that there might be good reasons for making exceptions to this practice. The Ministry of Education is concerned only with the tribunal to be set up under Part III of the Education Act, 1944. The Ministry has not yet discussed the Tribunal's proposed procedure with the Lord Chancellor's Department (the

Lord Chancellor and the Lord President will make the rules for the Tribunal), but we had not thought of suggesting that its hearings should be in public in all cases. For example, we had thought that a school or teacher might wish to avoid the damaging publicity that would go with a public hearing, whether the Tribunal was to allow or disallow the Minister's complaint.

2. **Appeals against decisions of Tribunals**

In reply to Question 2137, Sir Patrick Spens said that his Society held very strongly that there should always be an appeal *on points of law* from any Tribunal to the High Court. The Ministry of Education would have no objection to the application of such a rule to any Tribunals to be set up under Part III of the Education Act, 1944.

3. **Enquiries: the publication of Inspectors' Reports**

In reply to Question 2132, Sir Patrick Spens said that the publication of an Inspector's Report to the Minister as soon as it was available would give the objector an opportunity of trying to correct any mistakes of fact in it before the Minister announced his decision. If advantage were taken of this opportunity, it would inevitably, in the Ministry's view, cause some delay in the Minister's decision being reached, and it would seem desirable to take account of this in considering the suggestion. As the Committee is aware, the Minister of Education already published his reports of enquiries into Compulsory Purchase Orders, but at the same time as he announces his decision.

November, 1956.

Ministry of Health

COMMENTS ON EVIDENCE OF OTHER WITNESSES

In his letter of 26th October the Secretary to the Committee asked whether the Ministry of Health would like to put in further written evidence on any matters raised by evidence already given before the Committee.

The Ministry wish to submit comments upon three matters in so far as they affect the procedures laid down in Regulations under Part IV of the National Health Service Act, 1946. (The procedures were described in detail in Statements 2 to 12 of the Ministry's main evidence[1].)

These matters are:

1. Hearings in public.
2. Legal representation.
3. The absorption by the Medical and Dental Service Committee respectively of the judicial functions of Local Medical and Local Dental Committees (Prof. Robson's evidence[2].)

1. **Hearings in public**

Under Part IV of the National Health Service Act, 1946, there are the following types of hearings. (For convenience, references to the relevant Statement in the Ministry's original evidence concerned are quoted in brackets.)

(*a*) Hearings before the Tribunal (Statement 2).

(*b*) Hearings before the Service Committees (Statement 4).

(*c*) Hearings before the Local Medical and Local Dental Committees (Statements 9 and 10).

(*d*) Hearings of appeals and of representations made to the Minister of Health (Statements 3, 7, 8, 11 and 12).

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[1] *Memoranda submitted by Government Departments. Vol. II.*
[2] Days 13–14, pp. 489–90.

(a) *Hearings before the Tribunal*

The Ministry would see no objection to public hearings provided the respondent were given the right to claim a private hearing. (This would require amendment of Section 42 (7) (*a*) of the National Health Service Act, 1946.) Without this proviso the end results to a practitioner whom the Tribunal left on the list might be a much more severe financial punishment than intended since the number of his patients (upon which his remuneration is based) might drop substantially irrespective of the fact that the Tribunal had found in his favour.

(b) *Hearings before Service Committees*

There appear to the Ministry to be the following objections to public hearings:—

(i) Patients might feel embarrassed if the intimate details of their physical condition had to be discussed in public, and might thereby be deterred from coming forward with justifiable complaints.

(ii) Practitioners, especially doctors, would be severely prejudiced. It should be remembered that the practitioner is always on the defensive, since he cannot complain of a patient. Medical cases in particular are often very distressing although the fault of the doctor may be slight, e.g. the death of a child where the doctor has refused to come out at night because the message sent did not convey to him the gravity of the illness. It would not be easy for the public or the press, if admitted, to appreciate the real issues and misrepresentation in the press would have serious effects on the doctor's practice and relationship with his patients. It is doubtful whether the end results of public hearings could be fair to doctors.

(iii) The present informal method of dealing with cases at this first stage—which is a great merit of the system—might be jeopardised.

(c) *Hearings before Local Medical and Dental Committees*

Only professional matters are dealt with by these Committees. It would be inappropriate in the Ministry's view for the public to be present at these hearings as it would vitiate the whole purpose and object of having purely professional matters dealt with by the professions themselves. The advantages of the present functions of these Committees are set out more fully in paragraph 3 below.

(d) *Hearings of appeals and of representations*

(i) Hearings of appeals in disciplinary cases are more formal than the original hearings by Service Committees, but otherwise the reasons for hearings in private set out in para. 1 (*b*) apply.

(ii) Hearings of representations on the amount of a withholding of money (Statement 8) often turn on the practitioner's own circumstances (including his financial circumstances), and do not directly affect members of the public. The facts of the case are not at issue at this stage. It seems appropriate for hearings of representations to be in private.

(iii) It would be inappropriate for appeals on professional matters (Statements 6, 7, 11 and 12), e.g., from decisions of Local Medical Committees or regarding the selection of doctors for vacancies by the Medical Practices Committee, to be in public. The issues on appeals from decisions of Local Medical Committees are highly technical and in either case matters which may involve the criticism of one professional man by another would be bound to be less frankly dealt with if the proceedings were in public.

2. **Legal representation before Service Committees**

Legal representation is not at present permitted before Service Committees. These Committees are very carefully constituted (Statement 4) to ensure an even balance between lay and professional interests under a lay (but not necessarily legally qualified) chairman, the intention being that they shall investigate complaints, many of which are trivial, without undue formality. All members and the Chairman do the work voluntarily. Normally their conclusion is accepted by both parties.

If legal representation were permitted before the Service Committee the whole character of the proceedings would change. The professional respondents would feel bound to make use of it because their professional reputation is at stake and the complainants would feel at a disadvantage if they did not have the same help.

If legal representation became usual the present constitution and staffing of the Service Committee would be unsuitable and either a legally qualified chairman or a legally qualified clerk would be essential.

Such a chairman would presumably have to be paid on a sessional or part time basis. There are about 1,400 cases a year.

The present staff of Executive Councils is not equipped to handle cases on a legal basis. Their primary duty is to deal with the routine administrative responsibilities of the Councils: very few Clerks or other members of staffs have a legal qualification, and as many of the 138 Councils have only a few Service Committee cases a year, the staff would not have the advantage of constant familiarity with legal procedure.

If the Clerk of the Council were to retain the responsibility for correspondence relating to cases, for advising on procedure, for acting as Clerk to the Service Committee, and, in cases not involving a complainant, for presenting the case to the Committee, a legal qualification would be essential if there were not a legal chairman, and probably desirable even if there were. This would involve considerable and expensive up-grading of the posts, for only 30 of the 138 clerks are on scales of salary with a maximum of £1,500 or above (the lowest scale is £890—£1,071) and a qualified lawyer ready and competent to undertake wide and specialised administrative responsibilities might well expect £1,500 a year and upwards for a post with no regular avenue of further promotion. While it might be possible to transfer this part of the Clerk's work to private lawyers acting for Executive Councils such arrangements might be expected to be expensive.

A change from the present basis would in the Ministry's opinion involve increased expense at every turn, and legal aid, which it is thought would in the long run be inevitable, would further add to the cost of the proceedings, many of which turn on points of a trivial nature. The wisdom of such a change when the present machinery appears by and large to be working to the general satisfaction seems open to doubt.

3. Removal of judicial functions from Local Medical and Local Dental Committees

The suggestion that the judicial functions of the Local Medical (and by inference the Local Dental) Committees should be removed from them appears to spring from a misconception of the principle on which the present arrangements are based. These arrangements rest on the belief that, in purely professional matters, where no particular patient is involved, a doctor is best judged by his peers. The advantages are that:—

(*a*) The profession in any particular locality is given the responsibility for enforcing a high standard of professional conduct among the members of the profession working in the locality.

(*b*) The members of the profession, as has been found by experience, are apt to take a sterner view of proved professional misconduct than mixed tribunals. On purely professional tribunals, the practitioner not only usually receives treatment fully commensurate with his fault, but is also often severely condemned by his colleagues.

The matters now dealt with by Local Medical Committees include the investigation of excessive prescribing, and of complaints made by one doctor about another. The Local Dental Committee are responsible for the procedure for investigating excessive dental treatment, and for dealing with complaints by one dentist about another. It would seem to the Ministry to be a mistake to transfer these functions to the Service Committee and the professions concerned might be expected to object strongly to such a proposal.

November, 1956.

Ministry of Housing and Local Government

LOCAL VALUATION COURTS

Note: These figures were submitted in response to Question 574 (Days 3-4) of the *Minutes of Evidence.* The Ministry pointed out that the table relates to appeals by owners or occupiers and that it is possible for an owner or occupier to appeal even though he is not the ratepayer. In practice this rarely happens and in this context "owner or occupier" can be regarded as synonymous with "ratepayer".

The figures were compiled from annual returns made to the Ministry by the Panels.

Year	Appeal allowed	Appeal allowed in part(1)	Appeal dismissed
1950–1(2)	368	1,029	2,113
1951–2	528	788	1,049
1952–3	754	946	1,419
1953–4	919	924	1,297
1954–5	640	1,112	1,289

(1) e.g., if the proposal was for a reduction of £10 in gross value, the court might have allowed a reduction of £5.

(2) 14 months—1st February, 1950, to 31st March, 1951.

27th February, 1956.

TRIBUNAL CLERKS

Allegation by a witness of the Society of Labour Lawyers

Note: The correspondence printed below relates to the oral evidence of Mr. R. S. W. Pollard (Days 13-14, Q. 3016-8).

Ministry of Housing and Local Government,
Whitehall, London, S.W.1.

Ref.
Fin.D.91038/22/37.

19th July, 1956.

Sir,

I am directed by the Minister of Housing and Local Government to enclose for the information of the Committee a copy of the letter addressed to the Society of Labour Lawyers on June 14th and a copy of the Society's reply of July 4th.

The Minister wishes the Committee to know that he regards the allegation as preposterous. Had any evidence been forthcoming in its support, he would have been glad to have had it investigated.

A copy of this letter is being sent to the Society.

I am, Sir,
Your obedient Servant,
(*Sgd.*) A. G. RAYNER.

J. Littlewood, Esq.,
Committee on Administrative Tribunals and Enquiries,
London, W.1.

91038/22/37.

14th June, 1956.

Madam,

I am directed by the Minister of Housing and Local Government to say that his attention has been drawn to a report in "The Times" of 6th June of the evidence given on behalf of the Society before the Committee on Administrative Tribunals and Inquiries. This contains the passage:—

> "Mr. Pollard also knew of a clerk to a rating court who had been 'more or less told by the Ministry of Health that if he wanted a salary increase he must see that the decisions of his tribunal were favourable to the Inland Revenue'."

The Minister assumes that this refers to the Clerk of a Local Valuation Panel, whose salary he is required by section 47 (2) of the Local Government Act, 1948, to defray as part of the expenses of the Panel. (Until 1951 this was a function of the Minister of Health.)

The Minister would be glad if you would supply him with the evidence on which this statement was based.

I am, Madam,

Your obedient Servant,

(*Sgd.*) A. G. RAYNER.

Hon. Secretary,
The Society of Labour Lawyers,
9, *Kings Bench Walk,*
*Temple, E.C.*4.

The Society of Labour Lawyers,
9, King's Bench Walk,
Temple, E.C.4.
4th July, 1956.

Dear Sir,

Further to your letter of the 14th June, I have now consulted with Mr. R. S. Pollard regarding the contents of same.

Mr. Pollard asks me to inform you that he is not prepared to supply any further information or evidence on this matter.

Yours sincerely,

(*Signed*)

Hon. Secretary.

The Secretary,
Ministry of Housing and Local Government,
Whitehall,
*S.W.*1.

VOLUME OF COMPULSORY PURCHASE

1928–30 compared with 1953–55

Ministry of Housing and Local Government.
Whitehall, London, S.W.1.

11th December, 1956.

Dear Littlewood,

You asked me a few days ago whether I could supply the Committee with any figures showing how the volume of compulsory purchase at the time of the Donoughmore Committee compared with that in recent years.

I attach a table giving some information which will, I hope, assist. In 1928–30 the compulsory purchase order procedure was virtually confined to acquisitions under the Housing Act, 1925. Powers of compulsory acquisition for public health and local government purposes were conferred by provisional order and I have included statistics for such orders. As will be seen from the table, the gross totals for 1928–30 vary from 45 to 55, while the figures for compulsory purchase orders confirmed by the Minister of Housing and Local Government in 1953–55 range from 765 to 847. The 1953–55 figures, of course, relate to a wider range of services. For example, acquisitions under the Planning Acts are a post-war feature.

This very steep rise is, however, by no means wholly or even mainly a post-war phenomenon. There was a vigorous slum clearance drive in progress in the immediate pre-war years and the number of compulsory purchase orders confirmed in this connection rose to 545 in 1938–39.

Yours sincerely,

(Sgd.) J. CROCKER.

J. Littlewood, Esq.,
14–15, *Stratford Place, W.*1.

TABLE

COMPULSORY PURCHASE ORDERS, ENGLAND AND WALES

Comparative Figures of Orders Confirmed

	1928	1929	1930
Compulsory Purchase Orders Confirmed			
Part III Housing Act, 1925	33	36	31
Miscellaneous	1	1	2
	34	37	33
Provisional Orders made			
Police	1	—	—
Public Health	8	14	13
Public Offices	1	—	1
Water Undertakings	—	—	1
Sewage disposal	—	1	3
Public Open Space	1	2	2
Miscellaneous purposes	—	1	—
	11	18	20
GROSS TOTALS	45	55	53

	1953	1954	1955
Compulsory Purchase Orders Confirmed			
Part V Housing Act, 1936	571	371	340
Part III Housing Act, 1936	81	221	348
Planning Acts	83	73	74
Police	24	16	5
Public Health	19	18	14
Children's Homes	—	3	1
Fire Services	19	8	4
Public Offices, etc.	7	3	5
Water Undertakings	1	7	5
Sewage disposal	6	12	13
Public Open Space	28	26	27
Miscellaneous purposes	8	7	4
	112	100	78
GROSS TOTALS	847	765	840

Ministry of Labour and National Service

MILITARY SERVICE (HARDSHIP) COMMITTEES

Application for leave to appeal

Note: The following information was submitted in response to Q. 181 of the *Minutes of Evidence* (*Days* 1–2).

There is no means of ascertaining the number of cases in which application to the Committee for leave to appeal to the Umpire is made in the course of the hearing of the application for postponement. Where application for leave to appeal is made subsequent to the hearing of the application for postponement the matter is referred separately to the Committee and is recorded as an item in the case lists. Case lists are destroyed annually under standing instructions but examination of those for 1955 shows that the number of applications for leave to appeal during the year was 115, of which 61 were refused.

REINSTATEMENT

Analysis of appeals to the Umpire 1950–54

Note: Submitted in response to Q. 184 of the *Minutes of Evidence* (*Days* 1–2). The figures in brackets show the number of the appeals which were successful.

Year	Appeal made by or on behalf of	
	Employer	Applicant
1950	20 (7)	20 (7)
1951	8 (3)	6 (1)
1952	28 (16)	14 (8)
1953	22 (14)	10 (8)
1954	14 (14)	13 (7)
Total	92 (54)	63 (31)

COMMENTS ON EVIDENCE OF OTHER WITNESSES

23rd November, 1956.

Dear Littlewood,

In reply to your letter of the 26th October, I have looked at the published evidence of non-government witnesses.

In the main, so far as this Ministry is concerned, their observations deal with points on which I gave evidence to the Committee.

On the question of private versus public hearings of hardship cases before Hardship Committees and the Umpire, I explained to the Committee the reasons in favour of the present practice of holding those hearings in private. I also explained why, in my view, it is preferable to exclude legal representation before Hardship Committees. Having considered what has been said to the Committee on these two matters, we still maintain the views I expressed.

As to the administration of an oath, we do not think that evidence on oath is necessarily appropriate in the case of every kind of tribunal. In particular, we consider it desirable that proceedings in hardship cases should be kept as far as possible on an informal basis.

With regard to procedure, I should like to emphasize again the importance we attach to the absence of formality in connection with tribunals like the Hardship Committees which have to deal with matters of a very personal nature.

On the question whether the chairmen of tribunals should always be lawyers, our view is that although it is often advantageous to appoint a person with legal experience it would be a mistake to debar the Minister from appointing as chairman of a particular tribunal a person who was well qualified for the post merely because he had no formal legal qualification. In practice lawyers are usually appointed as chairmen of the tribunals with which the Ministry is concerned, but chairmen are not invariably lawyers. For instance, at the present time there are two non-legal chairmen of Hardship Committees. In the case of Conscientious Objectors Local Tribunals the Minister is required to appoint a lawyer.

As regards responsibility for the appointment of chairmen, our experience is that the present system under which the Minister makes the appointments has worked satisfactorily, and from a practical point of view there is a clear advantage in having all the members of a tribunal appointed by one authority. We should see no objection however to a requirement that the Minister should consult the Lord Chancellor before making these appointments. This, in fact, is what is now done in the case of Conscientious Objectors Local Tribunals and Compensation Appeal Tribunals.

It is noted that a suggestion was made in evidence that the Lord Chancellor should appoint not only the chairman but the other members of tribunals. There would be considerable disadvantages in this. In the case, for instance, of Hardship and Reinstatement Committees as well as Compensation Appeal Tribunals, the members are appointed to represent employers and employed persons. In our opinion the Minister of Labour and National Service is the proper person to make these appointments. The Ministry has close contacts with industry throughout the country and the Ministry's regional organisation is used in the selection of individuals.

Yours sincerely,

(*Signed*) HAROLD EMMERSON.

J. Littlewood, Esq.,
Secretary,
Committee on Administrative Tribunals and Enquiries,
*London, W.*1.

Ministry of Pensions and National Insurance

COMMENTS ON EVIDENCE OF OTHER WITNESSES

The Committee has invited the Department, if it wishes, to comment on the evidence of non Government witnesses bearing on the tribunals with which the Ministry is concerned.

1. A number of witnesses, particularly those representing legal interests, advocated substantial changes in the constitution and proceedings of all administrative tribunals including those of the National Insurance scheme. Of particular concern to the Ministry are the views that hearings should be in public, that there should be no bar to legal representation, that strict rules of procedure should be followed, that there should be some amalgamation of tribunals, and that there should always be an appeal on a question of law to the ordinary courts.

2. There was, however, little, if any adverse criticism directly relating to the tribunals which function under the various schemes which this Department administers, and in fact a number of witnesses expressed general satisfaction with them (see the T.U.C., Day 10, pages 310–311, paragraphs (*b*) and (*c*) and generally; the B.E.C., Day 13, page 468, paragraph 5 and generally; the Inns of Court Conservative and Unionist Society, Day 9, page 297, Question 2082; the Law Society, Day 16, page 625, paragraph 58). The Ministry believes that the general satisfaction with the tribunals is substantially attributable to the simplicity of their proceedings which are unlikely to intimidate even those unaccustomed to speak for themselves, to the speed with which decisions are

obtained and to the cheapness of the procedure for the parties concerned and for the country as a whole (see particularly the T.U.C. evidence). These attributes (coupled with a recognition that in the result justice is fairly dispensed) are cardinal to a scheme which touches every citizen in the land and in which, to take 1955 figures, the Local Insurance Officers yearly decided nearly 12 million new National Insurance claims and nearly 1 million Industrial Injuries claims, and the Local Tribunals heard over 37,000 N.I. appeals (885 went further to the Commissioner) and nearly 7,000 I.I. appeals (607 went to the Commissioner). The Ministry believe that so long as this system is giving such widespread satisfaction and so little complaint among those principally affected, changes which might impair these essential features of the structure should not be undertaken except for the most substantial reasons.

3. The witnesses who applied the general recommendations referred to in paragraph 1 above to N.I. Tribunals seem to have done so not so much on the basis of a detailed knowledge of these Tribunals, but on the basis of a somewhat theoretical approach to tribunals generally. Some of the witnesses representing legal interests—the Bar Council is a case in point—were strongly critical of procedures for dealing with property rights and their conclusions about administrative tribunals generally and this Department's tribunals in particular seem very much secondary to their concern with those procedures (see particularly Day 17, page 669, paragraph 1; page 670, paragraph 3 and page 711, Question 3827). At a number of points, usually as a result of oral questioning, witnesses representing legal interests were prepared to agree that departures from their general recommendations would be appropriate, e.g. the Law Society's agreement that appeals under the Family Allowances Act should not be in public because they deal with "very personal considerations" (Day 16, page 649, Questions 3540 and 3541), the admission of the Inns of Court Conservative and Unionist Society that it might be possible to do without legal representation where there is a legally qualified chairman (Day 9, page 301, Question 2112), the Law Society's admission that if there is a legally qualified chairman that would go a long way to keep order any decorum in the procedure of the tribunal (Day 16, page 657, Question 3599) and the Society of Labour Lawyers' exception of the National Insurance Commissioner from the general recommendation that there should be an appeal on a point of law from all administrative tribunals to the courts (Day 14, page 515).

4. While the Ministry of course accepts that administrative tribunals must deal justly and fairly with all claims coming before them, the formal procedures appropriate to the courts of law need not necessarily be taken as the standard for judging tribunals set up under modern social security schemes to decide disputes about rights conferred by those schemes on virtually every adult member of the population. Special tribunals were created for the schemes, partly, no doubt, in order to avoid placing an intolerable load upon the ordinary courts, but undoubtedly also because it was considered that some features of the procedures of the courts would tend to frustrate the purposes of the schemes. The procedures of the tribunals have in fact been examined in the context of the schemes on a number of occasions by independent bodies. The present National Insurance local tribunals are modelled on the Courts of Referees under the Unemployment Insurance Acts which were examined by a Committee under the chairmanship of Sir Harold Morris, K.C. in 1929 (Cmd. 3415) and again by the Royal Commission on Unemployment Insurance which reported in 1932 (under the chairmanship of His Honour Judge Holman Gregory, K.C.—Cmd. 4185). More recently (1948) the National Insurance Advisory Committee, after considering the draft regulations providing for certain essential procedures for tribunal hearings—for example the rights of claimants to appear and be represented at hearings and to be given a reasoned decision and notice of their rights of appeal—and after hearing representations from interested bodies including those representative of the legal profession, reported (H. of C. Paper 144, pages 12–13, paragraphs 40–46) "We are agreed that it is desirable that the proceedings at these tribunals should be kept as informal as possible and that expedition in dealing with these cases is desirable in the interests of the claimant. In view of the nature of the questions with which the tribunal will deal we think it is

reasonable to assume that the claimant will know his case and will be able to put it properly before the tribunal. For these reasons, we do not recommend that the claimant should be enabled to be represented legally." As regards the admission of the press and public, the Committee said "We are agreed . . . that in view of the personal and domestic matters which will in many cases be considered by these tribunals, it would be undesirable that their sittings should be open to the Press and the public".

5. Against the background of these general observations the Department offers the following comment on particular points:—

Legal Representation

(*a*) The Department, while recognising the argument in principle against the present outright bar to legal representation of the appellant before the National Insurance Local Tribunals, considers that for the reasons stated in its oral evidence the interests of the appellant are well looked after without legal representation. On this view, there is therefore no real need for legal representation and there can, therefore, be no right of the appellant to legal representation at the expense of anyone but himself. Legal representation in Industrial Injuries appeals before the local tribunals is, as the Committee know, permitted (and used in only 2 per cent of cases) but the Act makes no provision for costs (other than travelling and loss of time) and legal aid from the state is not available.

Amalgamation of Tribunals

(*b*) The Department believes that the adjudication system of the National Insurance scheme is likely to be best served by maintaining the present system of local Tribunals specialised to the purposes of the N.I. Acts and manned by part-time fee paid legal Chairmen and unpaid lay members selected from sections of the community prescribed in the Acts. The theory that amalgamation with other Tribunals would enable whole-time Chairmen of higher quality to be appointed is not one which the Department accepts. The quality of the existing Chairmen is in general high, it is believed, because locally practising lawyers of repute are attracted not alone by the fees but by the element of social service involved, and the Department do not think that a change to full-time salaried Chairmen would result in higher quality; they would indeed fear a lowering of quality or an increase of cost or both. The proposal for amalgamation has been linked in some quarters with the suggestion that such an amalgamation would provide the basis for its own special corps of Tribunal clerks. So far as the National Insurance Tribunals are concerned, the Department believes that, with the proceedings controlled by Chairmen of the type and quality at present provided, the kind of service as clerks given by officers of the Clerical Officer grade provided by the Department is adequate and that anything more would be an unjustified extravagance.

Question of appeal from the Commissioner

(*c*) The Ministry remains strongly of the opinion that, for the reasons stated in its oral evidence, it would be wrong to provide for further appeal beyond the Commissioner.

23rd November, 1956.

Ministry of Transport and Civil Aviation

LICENSING AUTHORITIES

Procedure at Public Sittings

Note: The letter printed below and the accompanying memorandum were submitted in response to questions 910 and 933 of the *Minutes of Evidence* (Days 3–4).

Ministry of Transport,
Whitehall Gardens,
London, S.W.1.

19th March, 1931.

Sir,

ROAD TRAFFIC ACT, 1930

Area Commissioners

Procedure at "Public Sittings"

At the meetings which have taken place at the Ministry several Chairmen of the Area Traffic Commissioners have raised the question of the procedure which should be followed by the Commissioners at "Public Sittings" for the hearing of applications for road service licences. It was suggested that a certain degree of uniformity was desirable, and the view was expressed that it would be helpful to the Chairmen if they could be furnished with a memorandum, which Mr. Rowand Harker said he would be prepared to draw up, outlining a form of procedure for their guidance.

I now enclose herewith, in the hope that it will be of assistance to the Commissioners, three copies of a memorandum on the subject, which Mr. Harker has been good enough to prepare accordingly.

The memorandum generally embodies the practice followed by Parliamentary Committees, and Mr. Harker informs me that he has purposely prepared the memorandum in an affirmative and negative manner for the sake of clarity.

I may add that, in so far as it is applicable, the suggested procedure is in general conformity with that which has been adopted since the passing of the Roads Act, 1920, in connection with appeals to the Minister against the refusal of licensing authorities to grant licences in respect of omnibuses under the provisions of Section 19 (3) of that Act.

I should make it clear that this Memorandum is circulated merely for the guidance of Commissioners and is in no sense a direction as to their procedure. The Minister has in fact no desire to interfere with their discretion in the matter.

I am, Sir,
Your obedient Servant,
HENRY H. PIGGOTT.

The Chairman of the
Traffic Commissioners.

ROAD TRAFFIC ACT, 1930

SOUTH EASTERN TRAFFIC AREA

Memorandum by Mr. Rowand Harker, K.C. on Procedure at Public Sittings

The function which the Commissioners have to discharge at Public Sittings is aptly put in Section 64 (1) of the Act, the marginal note of which is "Procedure of Traffic Commissioners". It is to "hear and determine". These words are a well known and time honoured expression and mean what they say; that the matters referred to in the Sub-section must be heard and determined at a Public Sitting and *not otherwise*. It is perfectly proper for Commissioners in the course of or after a hearing to suggest that the parties should confer together or with the Commissioners to try and settle their differences (they cannot compel them to do so), but caution should be observed in regard to holding before a Public Sitting conferences or interviews with Public Service Vehicle Operators, with Local Authorities, or indeed, with anyone, to discuss services, routes, time-tables, or any matter which the Commissioners are directed by the Act to hear and determine at a Public Sitting. This should never be done if some other party is likely to be or feel himself prejudiced.

Great care should be taken, when conducting conferences, or interviews, not to make any bargain or arrangement, or even to give any indication of policy which might be thought to influence the final decision of the Commissioners, and no opinion as to the merits of any question which may arise should even provisionally be expressed. It is absolutely necessary that the parties who appear before the Commissioners at a hearing should have complete confidence that the Commissioners have an open mind and will be unhampered by pre-conceived ideas, and uninfluenced by any negotiations or conversations that may have taken place, and any attempt beforehand to smooth the way for the public hearing may be construed as an attempt to stifle the free and proper discussion of the issue.

It is not intended that these notes should be taken as suggesting that any definite and exhaustive rules of procedure should be laid down. It would be undesirable to do so. It is, of course, desirable that the Public Sittings should be conducted in a regular way. This can only be done if Commissioners keep those who appear before them, whether members of the Bar, Solicitors, or laymen, under control. To obtain control Commissioners should base their procedure on some well tried and recognised system.

That followed in the Courts and at Courts Martial is too rigid and the best system to follow is that which has, for very many years, been adopted by Select Committees of both Houses of Parliament. Commissioners will find it an advantage if when they are in London they visited the Committee Rooms at the House. They would then see for themselves how the work is carried on.

I will deal with some points which occur to me.

(1) **Right of audience**

(*a*) Applicants or Objectors are entitled to appear in person. Cases will arise of objectors who think they have some grievance appearing in person. Hear these people as otherwise they will go away thinking they have got another grievance. The best way to deal with them is to let them run on. They will soon run down. If you interrupt them or put questions to them you will give them a fresh start.

(*b*) Apart from the parties themselves the right of audience before Parliamentary Committees is limited to certain defined persons. In my view there should not, within reason, be any limitations as to the persons to be heard at Public Sittings. Professional representatives and accredited representatives of, for instance—

(i) P.S.V. operators such as the General Manager, Traffic Manager or Secretary of a Company.

(ii) Societies or Associations of various kinds.

(iii) Trade Unions.

(iv) Local Authorities,

should be heard on behalf of the parties they represent.

(2) **Who is entitled to a "locus"?**

(*a*) The applicant.

(*b*) The objector.

(*c*) Any person who is already providing transport facilities along or near to the routes or any part thereof for which licences or backings are being applied. This will include in proper cases a Railway, Tramway, or Trolley Vehicle operator.

(*d*) Any local authority in whose area any of the routes or any part of any of the routes is situated. A County Council is a local authority for the purposes of Section 72.

(3) **Who may be given a "locus"?**

It is impossible to suggest any general rule. All persons who can satisfy the Commissioners that they have a *real* interest in the application should be given a "discretionary" locus, but such a locus should not be given lightly otherwise the Commissioners may find their Public Sittings interminable. One or two typical cases occur to me.

(*a*) A local authority or transport undertaking not entitled to a locus may be sufficiently interested in an application to justify the Commissioners in giving them a locus.

(*b*) A road authority (other than County Council or local authority) or owner over whose roads or bridges a service is proposed should be given a locus, for example—The Trafford Park Estates Co., Railway Cos., Lord Trent, the owner of The University Boulevard, Nottingham. The Crown also owns many private roads which the public are allowed to use.

(4) **Who to begin?**

The applicant or his representative. In cases where the applicant appears in person it will be a saving of time if he makes his statement from the witness chair. In other cases the applicants' representative will probably wish to make an opening statement. If he does he must be allowed to.

(5) **Steps in course of hearing**

Applicants' case

(*a*) If the applicant appears in person an objector is entitled to cross examine him. The applicant can, after the cross examination, explain by way of re-examination any of the answers he has given in cross examination. The best practical way of giving him this opportunity is for the Chairman to ask if he wishes to say anything more upon any matter or point which has been raised in cross examination, and with which the applicant did not deal in his evidence in chief. He will try to repeat his evidence in chief. Do not allow him to.

(*b*) *Calling of witnesses by Applicant*

After the Applicant has given evidence or after his representative has made an opening statement the applicant is entitled to call or have called on his behalf all witnesses whom he wishes to call or have called provided that their evidence is relevant to the matters which the Commissioners have to determine. The opponent or his representative is entitled to cross examine the applicant's witnesses. After cross-examination they are re-examined. The Commissioners are entitled to put questions to the applicant or his witnesses. It will be found as a general rule that it is better for the Commissioners to put their questions after the witness has been re-examined.

(*c*) *Close of Applicant's case*

After all evidence for the Applicant has been called the applicant closes his case.

Opponent's case

(*a*) *Speech*

An opponent or his representative is allowed *one* speech only. If an opponent does not call evidence he makes his speech immediately after the close of the Applicant's case; if he calls evidence he is entitled to make his speech before or after he calls his evidence.

(*b*) *Calling of witnesses by opponent*

If evidence is called by an opponent the above observations on evidence called by an applicant apply.

(*c*) This closes the opponent's case.

Right of Applicant to reply

This is often a difficult point to deal with. If an opponent produces no evidence there is no right of reply. If an opponent calls witnesses the applicant has a right of reply after the opponent has closed his case. Where, however, an opponent does not call witnesses he will, in some cases, give the Applicant a right of reply by reason of his having produced other evidence.

The above is subject to two reservations—

(i) If an opponent raises, during the course of his case, a point of law the applicant is entitled to reply on it.

(ii) The Commissioners can, if they desire it, ask the Applicant to reply irrespective of whether he is entitled to or not. The Commissioners should only do this in exceptional cases.

(*d*) The case ends except for the decision of the Commissioners.

(6) **Cases in which there are competing applications or more than one opponent**

I have above dealt with the simple case when there is one applicant and one opponent. Cases will arise of competing applications and where there is more than one opponent. The important question is in what order should the respective cases be presented. Examples will perhaps best explain the practice.

CASE 1.

A Applicant.

B, C, D, etc. Opponents.

A opens and calls his witnesses.

Order of cross-examination of Witnesses for Applicant

(*a*) Opponent represented by Counsel.

(*b*) If more than one opponent is so represented—Counsel cross-examine in order of their own seniority except that the Senior Counsel appearing has the right to cross-examine first or last or at some intermediate stage. This same rule applies to the next in seniority and so on.

(*c*) Opponents represented by Solicitors.

(*d*) Opponents represented by "Accredited representatives".

(*e*) Opponents in person.

Opponent cases

Should be presented in the same order as the cross-examination unless the opponents otherwise agree.

CASE 2.

A and B applicants with competing applications.

The first point which may arise is as to who shall begin. The party whose case is first in the Commissioners' "Notices & Proceedings" should begin. Follow the above general practice in ordinary cases.

CASE 3.

A and B competing applicants.

C opponent to A's application.

C cross-examinations in accordance with note Case 1 above.

C presents his case after A has closed his.

CASE 4.

A and B competing applicants.

C opposes A.

D opposes B.

Cross-examination as in Case 1.

C presents his case after A has closed his.

B then presents his case followed by D.

CASE 5.

A and B competing applicants.

C opposes both.

D opposes A.

Cross-examination as in Case 1.

D presents his case after A has closed his.

B presents his case followed by C.

Opponents are *not* allowed to cross-examine each others' witness.

(7) As to Evidence

In the Courts and at Courts Martial the rules as to what evidence should or should not be admitted are very rigid. It is in my view most undesirable that Commissioners should adhere to these rules, as by so doing many people would get the impression that they were not being given a fair hearing and an applicant or objector might be under the impression that he was handicapped if he did not have professional legal assistance. I think Commissioners will agree that it would be most unfortunate if this impression was created. It is better to listen to much that is not properly evidence and even to irrelevant arguments than to allow parties appearing before the Commissioners to go away with the feeling that they have not been allowed to say all they wanted to. It frequently happens that a litigant appears in person in the High Court and the Judges invariably allow such persons every possible latitude. Commissioners will, of course, rely upon their own judgment as to what weight they should attach to what is put before them.

ENQUIRIES UNDER ROAD TRAFFIC ACT, 1930

Note: The note below was submitted by the Ministry following their oral evidence on 23rd February, 1956 (Days 3-4)

For the Use of Persons Holding Inquiries on behalf of the Minister of Transport and Civil Aviation into Appeals under Sections 81 and 102 of the Road Traffic Act, 1930

These notes have been prepared for the purpose of giving guidance on certain points of procedure and evidence which are likely to arise at Inquiries conducted on behalf of the Minister of Transport and Civil Aviation and on other matters connected therewith.

As stated in the "Procedure Memorandum" (copy annexed) issued for the information of potential appellants, appeals under Sections 81 and 102 of the Road Traffic Act, 1930, are dealt with by the Minister as appeals against the decisions of the Licensing Authority for Public Service Vehicles on the evidence adduced before them at their Public Sittings. The Inquiry into an appeal does not therefore take the form of a re-hearing of the application. In general, no further evidence or representations should be admitted at the Inquiry, particularly where it could have been made to the Licensing Authority at their Public Sitting. It is, however, within the discretion of the person holding the Inquiry to allow additional evidence to be adduced where he is satisfied that the circumstances are such as to warrant a departure from the normal course. The following notes may be of assistance in considering the exercise of that discretion:—

(*a*) where the Licensing Authority in their "Statement on the Appeal" introduce matters which were not stated in evidence before them at the Public Sitting, the appellant should have the right to adduce rebutting evidence; and the Inquiry may, if need be, be adjourned for the purpose, undesirable as adjournments are clearly extraneous, it may be preferable to give an undertaking to ignore them rather than permit rebutting evidence to be given.

(*b*) The submission of additional statistics or documents should not normally be allowed at the Inquiry even where they are intended to confirm or rebut some forecast made before the Licensing Authority. Statements or documents which are merely analyses or amplifications of evidence or documents which were before the Licensing Authority and which have been prepared for the purpose of elucidation, are, however, often admitted, subject to the opposing parties having an opportunity to reply.

(*c*) Reference to evidence given before the Licensing Authority in other cases should be confined to evidence so given prior to the hearing of the application to which the appeal relates. Such evidence, as also evidence given before the Licensing Authority on applications relating to the same service as that to which the appeal relates, should only be permitted if prior notice has been given of the intention to refer to such evidence in time for the Licensing Authority concerned in the appeal to comment on it and for the opposing parties to have a proper opportunity of considering it. In this connection it would seem reasonable to allow reference to documents of record (such as P.S.V. 66) which were available to the Licensing Authority and to the other parties at the time of the hearing even though no specific reference was made to them.

(*d*) If the appellant seeks to adduce a petition as evidence, it will be competent to the opposing parties to make such comments as they may see fit upon the petition itself or the manner in which it may have been prepared and presented.

(*e*) (i) Where a local authority (within the meaning of Section 72 (11) of the Act) who did not support or oppose the application before the Licensing Authority seeks to make representations in connection with an appeal, they are, as a general rule, formulated in writing. In some cases permission is asked to make oral representations at the Inquiry. In all such cases a note to that effect will appear on the papers. The person holding the Inquiry should announce at the beginning of the hearing that written representations on the subject of the appeal have been received from such and such local authority and he should read the substantive part of the representations for the information of the parties and should allow the parties an opportunity to comment upon them. Where it is necessary for him to deal with a request that further oral representations should be received at the Inquiry, he should, in arriving at a decision on the point, bear in mind the general principle as to additional evidence and be guided by the circumstances of the case.

(ii) In cases where a similar line of action has been taken by a Parish Council, Chamber of Commerce, Ratepayers' Association, etc., it is generally advisable that the Minister's representative should mention the existence of such letters and offer to read the substantive part of the representations if so requested by any of the parties to the appeal. The Minister's representative may, in his discretion, also hear oral representations from such councils, associations, etc., but this course is only adopted in very exceptional circumstances.

2. If any objection is taken to the admission of evidence and the person holding the Inquiry does not feel that he can give a definite ruling on the spot but inclines to the view that the evidence should on the whole be admitted, it is open to him to admit the evidence provisionally and inform the parties to the appeal that he will report to the Minister that objection has been taken and the grounds on which it is based, leaving it to the Minister to decide whether the evidence should be taken into account or not. This course should only be adopted in very exceptional circumstances as the person holding the Inquiry is usually in the best position to determine whether it will be fairer to all parties to admit the evidence or to exclude it.

3. If an appellant, whilst not widening the ambit of his appeal, seeks to adduce arguments which in strictness may not be covered by the written grounds of the appeal, it will generally be desirable to allow his case to be put fully subject to the

adjournment of the Inquiry if the person holding it feels that the Licensing Authority should have an opportunity of commenting on the additional arguments or that the other parties should have more time in which to consider them.

4. If legal points are taken at the Inquiry the Minister's representative should note them carefully and inform the parties concerned that he will duly report them to the Minister. If any point has already been dealt with in the papers on the file, the Minister's representative should not state the advice which the Minister has received upon the point though he may use any material in the papers for the purpose of elucidating the point in argument.

5. After the Inquiry has been closed, it is undesirable that any communication should be held by the person holding the Inquiry either with the Licensing Authority or with the appellants or objectors, save where it has been agreed at the Inquiry that one of the parties should supply definite information or specific documents.

6. The report of an Inquiry will be made available for inspection by the parties to the appeal after the promulgation of the Minister's decision.

7. The report of the Inquiry will no doubt indicate the opinion formed by the Minister's representative and make a definite recommendation wherever possible. As indicated above, the report will be available for inspection by the parties, and if the Minister finds himself unable to accept the recommendations of the report, the letter announcing his decision will include a statement of the reasons, which have led him to take a course other than that recommended. In some exceptional cases where appeals raise important questions of general policy, the person holding the Inquiry may be unable to do more than set down the evidence and representations as submitted to him and, after stating such conclusions as he has been able to draw, indicate that the decision must be reached in the light of general ministerial policy.

8. In the majority of Inquiries held prior to September, 1939, no shorthand note was taken. If, however, arrangements are made by one of the parties for attendance of a shorthand writer at the Inquiry, the Minister's representative should arrange for a copy to be supplied to the Minister and is authorised, if necessary, to agree to a charge not exceeding 8d. per folio of 72 words. If on reading the papers the Minister's representative feels that he will be unable to deal with the case satisfactorily unless a shorthand note is taken, the Minister will be prepared to consider making arrangements himself for the attendance of a reporter.

9. The Minister has decided that as a general rule his costs should be recovered from an unsuccessful appellant. In any case where the person holding the Inquiry considers that the appellant should not be required to pay those costs, a statement to that effect should be included in his report, together with the reasons which have led him to that conclusion.

PROCEDURE ON APPEALS

Note which the Department makes available to prospective appellants

(submitted by the Ministry following their oral evidence on 3rd February, 1956)

ROAD TRAFFIC ACTS, 1930 TO 1947

Procedure on Appeals against decisions of Licensing Authorities relating to applications for (*a*) road service licences or (*b*) consents to the running of public service vehicles.

1.—(*a*) The procedure for lodging appeals relating to road service licences and backings is governed by Regulation 13 of The Public Service Vehicles (Licences and Certificates) Regulations, 1952, which is reproduced in full at the end hereof. The following is a brief summary of the main provisions of that Regulation—

(i) an appeal must be lodged with the Minister in writing not later than one month after the date on which the decision appealed against is published in Notices and Proceedings,

(ii) the appeal shall indicate the decision by which the appellant is aggrieved and state the grounds on which the appeal is made,

(iii) a copy of the appeal shall be sent to the Licensing Authorities, and

(iv) a copy shall be sent to the persons who made objections or representations or, if the appeal be made by an objector, to the applicant.

The appellant, in lodging the appeal, should inform the Minister to what parties (as above) he has sent copies of the appeal.

(*b*) Under Section 102 of the Act of 1930, any authority, county council or person, upon whom the Licensing Authorities duly serve notice of their decision in relation to an application for consent, may appeal to the Minister within 14 days of the receipt of such notice.

2. The normal practice of the Minister is to appoint a person to hold an Inquiry into the subject matter of the appeal. All the parties concerned are notified, usually at least 14 days in advance, of the time and place at which the Inquiry will be held.

3. The Minister has power to make such Order as to payment of the costs incurred by him in connection with the Inquiry as he may think fit. He has no power, however, to make any Order as to the costs incurred by any of the parties to the appeal. The costs incurred by the Minister in connection with an Inquiry are, as a general rule:—

(i) the appropriate fee payable to, and any travelling and other appropriate expenses incurred by, the person appointed to hold the Inquiry;

(ii) the costs of a transcript of the proceedings before the Licensing Atuhorities;

(iii) any costs incurred by the Minister for the hire of accommodation for the Inquiry; and

(iv) if a shorthand note is taken of the proceedings at the appeal Inquiry, the cost, if any, of a copy of the transcript.

4. The Licensing Authorities are not represented at the Inquiry, but furnish to the Minister a "statement on the appeal" containing their general observations on the case and indicating the reasons for their decision. A copy of this statement is forwarded to each of the parties to the appeal before any Inquiry is opened.

5. The appeal is against the decision of the Licensing Authorities on the application and on the evidence which was before them at the Public Sitting. The Inquiry will be restricted in scope accordingly. It will not take the form of a re-hearing of the application and, as a general rule, additional evidence will not be admitted, unless for special reasons the person appointed by the Minister to hold the Inquiry determines otherwise. If any party desires to refer to proceedings at earlier sittings of the Licensing Authorities (in the area concerned or in another area) he should at the earliest possible date intimate to the Minister and to the other parties his intention to ask leave so to do.

6. The Minister's representative will normally have a transcript of the shorthand notes of the proceedings before the Licensing Authorities. This will render it unnecessary for the appellant or the objectors to repeat the evidence which was given before the Licensing Authorities. Copies of the transcript are obtainable from the Licensing Authorities on request on pre-payment at the rate of 8d. per folio of 72 words.

7. The Minister's decision will be based on a consideration of all the facts and circumstances of the case and of the report of his representative upon the proceedings at the Inquiry.

8. After the Minister's decision on an appeal has been published, a copy of the report of his representative who held the appeal Inquiry is available for inspection by any interested party at the office of the Ministry, Berkeley Square House, London, W.1, and at the office of the Licensing Authorities concerned. Further copies of the report are obtainable from the Ministry on request on pre-payment at the rate of 5s. per copy.

MINISTRY OF TRANSPORT AND CIVIL AVIATION

Regulation 13

13.—(1) Every appeal to the Minister against the grant, refusal, revocation or suspension of, or against any conditions or any variation of the conditions attached to, a road service licence or a backing shall be lodged with the Minister at the

principal office of the Ministry of Transport not later than one month after the date of publication of the issue of Notices and Proceedings in which the decision appealed against is published.

(2) Every appeal to the Minister against the refusal, revocation or suspension of a public service vehicle licence or a certificate, shall be lodged with the Minister at the principal office of the Ministry of Transport not later than one month after the date of the decision appealed against.

(3) Every appeal to the Minister against the limitation of the duration of a certificate shall be lodged with the Minister at the principal office of the Ministry of Transport not later than one month after the date of the notice proposing the limitation, whether or not the certificate has been issued in the meantime.

(4) Every such appeal shall be in writing, shall indicate by reference to the name of the applicant for the licence or certificate and the number allotted to the application by the Licensing Authority the decision by which the appellant is aggrieved and shall state the grounds on which the appeal is made. In the case of an appeal against the grant of a road service licence or a backing the appeal shall state whether the appellant desires the Minister to revoke the licence or backing or what conditions, if any, he desires the Minister to order to be attached to it. A copy of the appeal shall be sent at the same time as the appeal is sent to the Minister, or as soon as may be thereafter,

(i) to the Licensing Authority,

(ii) in the case of an appeal by an applicant for the grant of a road service licence or a backing against the refusal thereof or against any condition imposed by the Licensing Authority, to every person who lodged an objection or representation in respect of the application, or whose objection or representation was heard by the Licensing Authority at the public sitting at which the application was beard,

(iii) in the case of an appeal by the holder of a road service licence or a backing,

(*a*) against the revocation or suspension thereof, to any person who lodged an objection or representation in respect of the original application or whose objection or representation was heard by the Licensing Authority at the public sitting at which the original application was heard, and

(*b*) against a variation of the conditions attached thereto, to any person who lodged an objection or representation in respect of the original application or the proposal to vary the conditions or whose objection or representation was heard by the Licensing Authority at the public sitting at which the original application was heard or at the public sitting, if any, at which the proposal to vary the conditions was considered, or

(iv) in the case of an appeal by a person who opposed the grant of or the variation of any condition attached to a road service licence or a backing against the grant thereof or against any condition or variation of the conditions attached thereto, to the applicant.

COMMENTS ON EVIDENCE OF OTHER WITNESSES

1. In accordance with the Committee's invitation to Government Departments to submit further evidence on major points of principle which have been raised in evidence by outside persons and organisations, the Ministry of Transport and Civil Aviation desire to offer the following comments.

2. The Department find nothing in the evidence which would lead them to modify in any way the views expressed in their oral evidence. They wish, however, to comment on two points in connection with the Licensing Authorities (now called "Traffic Commissioners").

Qualifications of Chairmen

3. The character and duties of administrative tribunals vary so widely that it is not thought practicable to lay down any general rule about the qualifications their

chairmen should possess. In a case such as the Transport Tribunal, it is clearly right that the Chairman should be an experienced lawyer. In others, this may he unnecessary or even undesirable. In the particular case of the Traffic Commissioners, for example, who have to decide hroad issues of public interest, it is not only among lawyers that Chairmen with the right qualities are to be found. It would therefore be inappropriate to rule that the Chairmen must always be lawyers, although some of the present Chairmen are in fact lawyers.

4. The Thesiger Committee considercd whether the Chairmen of Traffic Commissioners ought to have expert qualifications. In their Report they say that they "are entirely opposed to the view that any of the members of the Authority should have spccial qualifications" and that the Chairmen should be "selected as the most suitable in all-round qualifications for the appointment, irrespective of either particular expert knowledge or their previous occupation". The Committee will be aware of paragraphs 29 and 30 of the Thesiger Report, with which this Department entirely agree.

Appeal Procedures

5. It has been suggested that appeals from decisions of Traffic Commissioners on road passenger cases (which occur mainly in regard to road service licences) should lie to the Transport Tribunal. The present procedures for appeal from the Traffic Commissioners have worked well and given satisfaction to the industry for the past twenty years. The Thesiger Committee (with one dissentient) have recommended the retention of this system, and the Department are content to accept their view.

27th November, 1956.

National Assistance Board

COMMENTS ON EVIDENCE OF OTHER WITNESSES

1. The Committee have invited the Dcpartment to comment on criticisms from non-Government witnesses and to express views on major issues of principle emerging from the evidence received hy the Committee. The Board are not concerned with the second part of the terms of reference; and this memorandum is confined to the appeal tribunals constituted under the National Assistance Act, 1948(1). These tribunals have been specifically mentioned by only a few witnesses but they are affected by a numher of comments on administrative tribunals at large. In the last two paragraphs of the memorandum reference is made to two matters on which thc Committee have asked Sir Harold Fieldhouse to appear before them again(2).

2. It will be convenient for the present purpose to start by recapitulating the nature of the main task assigned to the Assistance Tribunals. About 95 per cent. of the cases heard are appeals by persons aggrieved at decisions of the Board's local officers to deny assistance or to grant it at what the appellant considers to he too low a rate. The officers' decisions are takcn under Regulations which set out scales for computing the requirements of the applicant and his dependants and prescribe the treatment of any resources, but this arithmetical computation of need is subject to discretionary variation (e.g. "where there are special circumstances the amount ..... may be adjusted as appropriate to those circumstances"). The real issue in nearly all appeals is the extent to which these discretionary powers should be exercised. The tribunal may uphold the officer's determination or substitute any other determination that the officer could have made, whether more or less favourable to the appellant.

(1) For information already supplied by the Department about these tribunals see Volume I of *Memoranda submitted by Government Departments* (pp. 27–34) and the record of oral evidence by Sir Harold Fieldhouse, the Board's Secretary, printed in *Minutes of Evidence*, Day 1–2 (pp. 42–49).

(2) *Note:* Sir Harold Fieldhouse was examined on these two matters on 3rd December, 1956 (Day 24, Q. 5789–5796).

3. Questions of law hardly ever arise. When they do they are usually resolved without difficulty by reference to tbe plain requirements of the Act and the Regulations. The tribunal's job is to decide what appears to it the most appropriate—not the only lawful—action that could be taken in a particular instance. Thus they are quite different from the National Insurance Appeal Tribunals, which interpret statutory provisions in their application to given sets of circumstances and in relation to statutory rights. The Assistance Tribunals do not make case law. In tbe debate on the Committee stage of the National Assistance Bill the then Minister of National Insurance, when resisting an amendment to superimpose an Umpire on the tribunals, said among other things (House of Commons Report, Standing Committee "C", 18th December, 1947, col. 133):—

> I am certain that flexibility and freedom are absolutely essential. When tbe Umpire decides, his ruling applies not only to the case before him but to all other cases in similar circumstances. When an appeal tribunal [i.e. a national assistance tribunal] comes to a decision it only applies to the case decided and not to other cases.

4. The appellants are usually simple people; most of them are old and some are nervous. Care is therefore taken that the proceedings shall be informal and indeed friendly, without any of the atmosphere of a law court. The appellant or his "friend" (or both) will be allowed to tell his story in his own way, very much in the manner described by the Treasury Solicitor when answering questions about the Rent Tribunals (Day 8, Q. 1834-6). The tribunal, when considering "special circumstances", may find itself discussing matters as intimate as the appellant's stock of underclothing. Since a person applying for assistance is expected to disclose all his personal and household circumstances he is assured that the information he gives to the Board or the tribunal will not be passed on to any third party. Hearings are therefore held in private.

5. Against this background the Department's views on particular criticisms or suggestions are set out below.

6. **Informality.** Different tribunals call for different degrees of simplicity and tbe Assistance Tribunals have been quoted as an example of the kind in which extreme simplicity is needed. It has, however, been urged that simplicity and the retention of some sort of order in the proceedings are not incompatible. Plainly some things should be formally regulated from outside the tribunal—e.g., time allowed before a hearing takes place; constitution of the tribunal; who shall be present at a hearing, including who may represent or accompany the person concerned; notification to the person concerned of hearing and decision—but it would be a pity to tie the hands of the chairman in such a matter as the order in which the parties state their case and ask questions.

7. **Power to administer the oath.** It is difficult to find any more ground for administering the oath at a National Assistance Appeal Tribunal than for the officer doing so when information is being given for the purposes of the decision of first instance. Both occasions are equally covered by the penal provisions about false statements and misrepresentations (National Assistance Act, 1948, s. 52). Administration of the oath would spoil the informal atmosphere that is desired at hearings.

8. **Publicity.** For reasons stated in paragraph 4 public hearings should not be allowed. The necessary conditions of confidence would not be safeguarded adequately by a provision allowing appellants to opt out of public hearings: many of those receiving assistance would fear that to avail themselves of such an option migbt prejudice their case. And even the converse—the hearing to be in private unless the appellant asked for it to be in public—would be undesirable. People would only have to read details of a case reported in the Press to assume, in spite of all attempts to explain the position, that public disclosure of the fact that assistance had been applied for and of personal circumstances might result from any appeal or indeed from any application for assistance. It bas been the policy of Governments since 1948 to give every encouragement to persons in genuine need to apply for national assistance, and any whittling down of the present rules ensuring complete privacy could undo much of the good that has been achieved over many years by the application of that policy.

9. **Chairmen.** It has been suggested that all chairmen of administrative tribuoals should be lawyers. No rule has been laid down for the Assistance Tribuoals, and at present 37 of tbe 151 chairmen have legal qualificatioos. The appointmeots are made by the Minister of Pensions and Natiooal Insurance and not by the Board, but the Department's view, for what in these circumstances it is wortb, is that tbe qualities required in a chairman of one of tbese tribunals include a knowledge of working class conditioos, an orderly miod, and a sense of fairoess possession of wbich he ought to be able to communicate to the kind of people appearing before him. These qualities are not confined to lawyers. If two candidates for a chairmanship, one a lawyer aod the other a layman, are equally endowed with tbem, the Departmeot would prefer tbe lawyer, but he will not come across much legal work in the course of his duties.

10. **Legal representation.** The rules governing the tribunal's procedure provide that the appellant may be represented or accompanied by any person not being a barrister, advocate or solicitor and appearing as such. This provision followed a similar one in the rules for the preceding tribunals, those establisbed under tbe Unemployment Assistance Act, 1934. The bar on legal representation was deliberate, being based in part on the view that where most of tbe matters in dispute were of a discretionary nature there was no ground for allowing a cootest between professionally qualified advocates but mainly on a desire to safeguard the simple and summary character of the proceedings. The decisioo taken in 1934 and re-affirmed in 1948 was influenced by a finding of the Royal Commission on Unemployment Insurance (1932) who approved what had been said about this matter in 1929 by the Committee on Procedure and Evidence for tbe Determination of Claims for Unemployment Benefit (the Morris Committee). These bodies were, of course, concerned with the iosurance field but their views may be taken as applying *a fortiori* to assistance. The Committee said—

> The intention of the legislature appears to bave been to avoid tbe forms and procedure of courts of law and with this in view to have excluded barristers and solicitors from appearing before the Courts of Referees . . . We believe it is in the interests of claimants to maintain an informal procedure in Courts of Referees, being convinced, as we are, that good results and equitable decisions are thus attained.

Quoting the above passage the Royal Commissioo said (paragraph 500 of their Report)—

> We agree with this expression of opinion and we should be reluctant to see the introduction of legal forms into the work of Courts of Referees. Moreover, . . time is an important factor . . . Delay would inevitably occur if time were taken up in instructing counsel or solicitors and arranging for tbeir examination and cross-examination of witnesses, and in the interests of the applicants themselves we are in favour of tbe existing provision.

11. **Further right of appeal.** Since questions of law hardly ever arise with the Assistance Tribunals the Department has no view on the question of an appeal from administrative tribunals on a poiot of law. It is coosidered, however, tbat there should not be a right of further appeal from the Assistance Tribunals on a point of fact. It is difficult to conceive on what principle one could justify superimposing a second tribuoal upon the first or wbat one could bope to gain by doing so. As already explained (paragraph 3), the appeals are entirely different in nature from those under the National Insuraoce Acts. In the absence of case law a superior tribunal could not have a co-ordinating mission: it could only retread the ground covered by the original tribunal (and earlier by the Board's officer) by way of considering the facts and forming a decision oo them. Tbe issues are not of a kind to be decided by a ceotral autbority remote from tbe cases, so tbat the second tribunal would have to be a body very much like the first. One such body could scarcely have pre-eminence in wisdom or experience over another. Moreover long drawn-out disputation about how much money sbould be allowed to provide a current subsistence seems contrary to common sense; and it could have an enervating effect on assistance admioistration, of which tbe essence is prompt service and speedy decisioo.

12. **Amalgamation of tribunals.** The Department would be against an amalgamation of the tribunals relating to insurance, assistance, pensions and bardship arising out of military service. Their work is very different; see paragraph 3 above for a comparison of the Assistance witb the Insurance Tribunals. Mention may be made of two particular advantages claimed for an amalgamation as affecting the Assistance Tribunals. The first is that amalgamation would facilitate provision of a further right of appeal. It has been submitted in the previous paragraph that this would be a disadvantage. The second is that the abolition of senarate Assistance Tribunals would end an anomaly, the appointment by the National Assistance Board of one member of each tribunal.(1) This criticism is out of date. As stated in oral evidence by Sir Harold Fieldhouse (Day 1–2, Q. 390) the Board now have no power of appointment apart from the routine operation of appointing workpeople's representatives in turn from a panel nominated by tbe Minister of Pensions and National Insurance.

13. **Venue of hearings.** The Committee wish to know whether the Dcpartment consider it would be practicable for tbe tribunals to sit in premises separate and distinct from those of any Government Deoartment. There would be no practical difficulty so far as concerns the working arrangements, for example, there are no cumbrous records or bulky reference books to be transported. From such knowledge as the Department possesses it seems likely that in most places a small room in a churcb hall or some similar building could usually be hired wben needed, but it is not possible to give a complete assurance about this witbout extensive enquiries in the 278 towns in which the tribunals sit. The Department would, however, venture to question whether the considerable expense involved in special hirings could be justified simply for the sake of giving more empbasis to the independent status of the tribunal. In the case of the Assistance Tribunals separate premises would not be wanted for the sake of publicity—as has been suggested in paragraph 8 publicity here is undesirable—and it is also considered that in no circumstances should a magistrates' court be the venue of assistance appeals.

14. **Documents.** The Committee also wisb to know whether it would be practicable, in so far as this may not already be done, for all communications directly relating to an appeal to be clearly tribunal documents emanating from tbe tribunal and not from the Department. There is no reason why this should not be done. Indeed, it has now been decided that such notices and nro forma letters about appeals as are headed "National Assistance Board" shall be amended on reprint in accordance with this suggestion.

26th November, 1956.

Scottish Office

COMMENTS ON EVIDENCE OF OTHER WITNESSES

TRIBUNALS

A. Legal Chairman

1. It has been represented in evidence before the Committee tbat the Chairmanship of Tribunals should be given only to persons with legal qualifications; and that legal representation of the parties sbould be allowed.

2. In the case of a number of Tribunals coming within the jurisdiction of the Secretary of State for Scotland, nrovision is already made for the appointment of a legal Chairman, and legal representation is allowed; and in respect of otbers tbe practice has been to appoint a legal Chairman wherever possible. There are, however, certain Tribunals in respect of which it is felt that the appointment of a legal Cbairman and/or legal representation of the parties would not in all cases be appropriate or desirable.

(1) Memorandum by the Society of Labour Lawyers. *Minutes of Evidence* (Day 13–14, page 516).

3. These include in particular the following (the references are to the Annex to the Scottish Office Memorandum published in Volume V of tbe *Memoranda submitted by Government Departments*) :—

(*a*) *Agricultural Executive Committees* (*Item B* (2))

Looking to the nature of the responsibilities entrusted to the Committees and to the desirability of having a Cbairman with practical knowledge of agriculture, tbe Department would regard it as undesirable to provide that a lawyer should in all cases be appointed as Cbairman.

(*b*) *The Crofters Commission* (*Item B* (4))

In view of tbe wide scope of the Commission's duties the Department would not favour the appointment of a legal Cbairman.

(*c*) *Scottish Agricultural Wages Committees* (*Item C* (2))

These are local Committees. The Department see no reason to disturb the present statutory provision that the Chairman should be appointed by the representative members of the Committee.

(*d*) *Medical, Pharmaceutical and Dental Service Committees and Joint Services Committee of National Health Service Executive Councils* (*Item C* (8) (*b*))

The Committees concerned are normally investigating complaints by patients against practitioners and the matters arising are generally professional. The proceedings are informal and evidence is not taken on oatb. The Department see no reason to disturb the provisions of the present regulations under which the Chairman is elected by the members of the appropriate Committee, and legal representation is not allowed.

(*e*) *The National Health Service Joint Ophthalmic Services Committee* (*Item C* (8) (*c*))

Similar considerations arise here.

(*f*) *The Scottish Medical Practices Committee* (*Item C* (8) (*d*))

The matters arising are entirely professional and the Act provides that tbe Secretary of State shall appoint a medical Chairman after consultation with representative organisations of the profession. Legal representation is not permitted.

(*g*) *Panel for determining appeals against decisions of the Scottish Dental Estimates Board* (Item C (8) (*e*))

The issue concerned is almost always a purely clinical matter and it is not felt that a legal Chairman would be appropriate or that legal representation is necessary. The Tribunal consists of two general dental practitioner referees (one of whom acts as Chairman) appointed by tbe Secretary of State from a standing list supplied by the British Dental Association.

(*h*) *Other National Health Service Tribunals* (*Item C* (8) (*f*))

(1) Referees to investigate extravagant prescribing. It is normal to appoint a member of the Scottish Bar as Chairman. Where, however, it is quite clear that only a medical question is involved, it appears unnecessary to have a legal Chairman.

(2) Referees to determine whether a fee may be charged for treatment given to a National Health Service patient by a general medical practitioner. Provision is made for the appointment by the Secretary of State of three referees, two medical and one practising advocate or solicitor. No provision is made for tbe appointment of a Chairman.

(3) Referees to determine whether a substance prescribed is a drug. The issues involved in this type of appeal are purely medical. No legal Chairman or representation is therefore thougbt to be necessary.

(*i*) *Rent Tribunals* (*Item C* (10))

Twelve of the Chairmen of the twenty-nine Tribunals set up in Scotland have legal qualifications, and the practice is to appoint legal Chairmen, as vacancies arise, unless an existing lay member of the Tribunal seems outstandingly qualified. The Department would be reluctant to disturb this practice.

B. Admission of the Public

1. In the case of certain of the Tribunals mentioned above (in particular those referred to under Items C (8) (*b*) to (*f*)) where the issues concerned relate to professional conduct or patient-practitioner relationship, it is considered desirable that provision should continue to be made for private hearings.

2. The remaining Health Service body which holds hearings is the National Health Service Tribunal (Item C (8) (*a*)) which is concerned with the disqualification or, later, reinstatement of medical and other practitioners under the National Health Service. Again because of the subject matter, it is considered desirable that provision should continue to be made for private hearings.

3. The same arguments apply with respect to appeals taken from the decisions of any of the Tribunals above-mentioned.

27th November, 1956.

Service Departments

"Safeguarding" of Service Installations

Note: Submitted in response to question 1613 of the *Minutes of Evidence* (Days 6–7).

1. This Memorandum is submitted at the request of the Committee to explain more fully how the "safeguarding" arrangements by the Service Departments affect landowners and others interested in land.

2. Under this procedure, the Town and Country Planning Acts are used to ensure that there is consultation before development is allowed to take place in the vicinity of airfields, explosives depots and certain technical sites, which might jeopardise the effectiveness of the Service installation or the safety of the public.

3. The Local Planning Authority is required by directions made by the Minister of Housing and Local Government, under Article 9 (3) of the Town and Country Planning General Development Order and Development Charge Applications Regulations, 1950 (S.I. 1950 No. 728) to consult the Service Departments before granting permission for development in the safeguarding area, which is shown on a plan accompanying the direction. The letter and the plan are marked "Confidential".

4. On receiving an application for development within the safeguarded area, the local Planning Authority forwards any necessary details to the Service Department concerned. After consideration of the merits of the case, the Department either requests the Local Planning Authority to withhold permission, or to impose conditions, or agrees that the development may be carried out.

5. In the meantime, the Local Planning Authority will have heen considering the development proposal from the planning aspect, and it may he that the application must be refused on other grounds, e.g. agricultural considerations. If, however, the application is refused solely because the Service Department so requests, the practice is for the applicant to be informed by the Local Planning Authority that the proposal is refused as tbe development proposed would interfere with Service installations in the vicinity. Where the Service Departments' objection is only one of the reasons for refusal of the application, the planning authorities usually include it among the reasons they give.

6. If the Local Planning Authority refuses permission, or permission is granted subject to conditions, the applicant may, if aggrieved, appeal to the Minister of Housing and Local Government, under Section 16 of the Town and Country Planning Act, 1947, by notice served within 28 days of the refusal, or of the granting of a permission, which is subject to conditions. The Minister must, if either the applicant or the Local Planning Authority so desire, give each of them the opportunity of being heard by an Inspector. If permission is withheld or conditions are imposed at the request of a Service Department, that Department will, so far as security considerations permit, make available to the parties a statement of reasons why they oppose the particular development concerned and will send to an inquiry a representative who will answer questions within the framework of the statement.

7. If planning permission is refused by the Local Planning Authority solely at the request of the Service Department, the applicant has precisely the same rights of appeal as he would have had if permission had been refused on any other grounds, and his rights to compensation, or to serve a purchase notice on the local authority in the event of his appeal not succeeding, are exactly the same. Whether compensation is paid or the land is acquired pursuant to a purchase notice, in which event the land is vested in the Service Department, no portion of the cost is allowed to fall on the local authority.

8. Insofar (if at all), as the owner of land suffers any financial loss by reason of refusal of planning permission arising from safeguarding, it is not greater than the loss which anyone may suffer as a result of a refusal of planning permission on other grounds.

9. It is open to any prospective purchaser or other interested party to apply for planning permission and a decision will be given by the Local Planning Authority. Indeed, quite apart from any question of safeguarded zones, no prudent person seeking to buy or acquire an interest in land for some specific development would commit himself thereto without first obtaining planning consent to the development. Until he makes a formal application for, and has received formal planning consent, he cannot be sure that the development he wishes to undertake will be permitted.

10. As the safeguarding information sent by the Ministry of Housing and Local Government, to the Local Planning Authority is marked "Confidential", owners would not normally know that their land had been safeguarded, and the Service Department interest in their land would not be known to them, or to any others (e.g. prospective purchases) unless and until an application was made to the Local Planning Authority to develop, and that development was refused at the request of the Department. Safeguarding does not in itself impose restrictions on development, but merely ensures consultation between the Local Planning Authority and Service Departments if and when development is proposed. Safeguarding of sites is constantly under review, and publication of maps, or the making of the information available generally would be objectionable on security grounds and might give the false impression that no development of any kind would be permitted.

25th April, 1956

COMMENTS ON EVIDENCE OF OTHER WITNESSES

Service Departments' comments on points of principle affecting them which arose in the course of evidence given before the Committee

There are two points of principle on which the Service Departments wish to comment. In the first place, there is the suggestion made by the National Federation of Property Owners (as well as by others) that "provision should be made by statute for the holding of an Inquiry into peacetime acquisitions under the Defence Acts".(1) Secondly, the Country Landowners' Association and others have suggested that the Defence Departments have, since the war, abused their powers by withdrawing the safeguards provided in the Defence Acts.(2)

(1) Days 17–18, p. 733.

(2) Days 15–16, p. 600 and Q. 3485.

On the first point, the Service Departments consider that their requirements for land differ from those of other Departments in one or both of the following respects, either of which may make a public inquiry unsuitable :—

(*a*) The requirement may he justified by general defence policy of a kind which cannot appropriately be argued at a public inquiry, particularly if aspects of that general policy, or the particular grounds on which the requirement is based, must be kept secret on grounds of security ;

(*b*) There may be a requirement of speed, in the interest of national defence, which is incompatible with the normal procedure of a public inquiry.

The Service Departments do not, therefore, regard a statutory ohligation to hold public inquiries as compatible with the needs of defence. They wish to draw attention to the present procedure which they follow and to the fact that every effort is made, within the limits of defence requirements, to give due weight to interests affected by their proposed acquisitions of land. The procedure includes getting into touch at an early stage with the private interests concerned in any proposed project, as well as with the national and local bodies concerned, and the holding of public inquiries whenever possible if some puhlic interest is endangered.

As regards the allegation of abuse of powers under the Defence Acts by withdrawal of safeguards under emergency powers, the position is that the Requisitioned Land and War Works Act, 1945, suspended for the duration of the "war period" (the extension of which has been subject to approval by Parliament annually, after debate) the following requirements of the Defence Acts:—

(*a*) The necessity for compulsory acquisition to be certified hy the Lord Lieutenant (or two Deputy Lieutenants) of the County ;

(*b*) The taking of the lands by a warrant given by the Treasury (unless the enemy shall actually have invaded the U.K.).

In fact, the effect of these safeguards is fully preserved in the present procedure, because :—

(*a*) Certification by the Lord Lieutenant is more than adequately replaced by the planning clearance procedure, which establishes that the Defence Departments' need is best satisfied in the puhlic interest by the acquisition of the site concerned ;

(*b*) Strict financial control is now exercised by the Treasury without the formality of a warrant.

6th December, 1956

Treasury Solicitor

COMMENTS ON EVIDENCE OF OTHER WITNESSES

Note :—Sir Harold Kent was examined on part of this memorandum on 20th December, 1956 (Days 25–26).

1. The Committee have invited me to comment on major points of principle emerging from the evidence given by outside persons and organizations. I would like, as in my memorandum of evidence,[1] to adopt a more general and theoretical attitude than Government witnesses representing particular departments. The views that I express are personal ones, based on my experience as a Government lawyer. I propose to arrange what I have to say by reference to the subject matter, rather than to the evidence of particular persons and organizations.

Appointment of legal chairmen

2. Most of the legal witnesses agree that administrative tribunals should so far as possible he presided over by legal chairmen. In general I accept this, but there may be some trihunals dealing with a subject which is not very judicial

[1] *Minutes of Evidence*, Day 8.

or is highly technical for which a lay chairman ought not to be ruled out. It is a practical question whether by restricting the field of choice to lawyers you may not make it more difficult to get good chairmen in all cases.

The method of appointment raises a question of principle which I would like to discuss briefly. It is plainly right that the Lord Chancellor should be concerned with the appointment of lawyers, but it is arguable whether he should make the appointment himself or, as the Donoughmore Committee recommended in the case of important appointments, the departmental Minister should make the appointment after consultation with the Lord Chancellor. I prefer the latter course which would still leave responsibility with the departmental Minister charged with the statutory functions in connection with which the tribunal is set up. The primary justification of an administrative tribunal must always be that it is adapted to serve the purposes of an Act of Parliament better than the ordinary courts. The departmental Minister ought to remain fully responsible for seeing that the tribunal plays its part satisfactorily, and he is in the best position to discharge that responsibility. I would like to develop this point, which perhaps does not arise very acutely on the appointment of legal chairmen taken by itself, when I come to comment on the proposals of Professor Robson for the systematization of administrative tribunals.

Minimum Procedural Code

3. The legal evidence is also plainly in favour of establishing a minimum procedural code applicable to all administrative tribunals. I am not at all opposed to this, but I would like to comment on some of the features of the proposed code.

(a) *Public Hearings*

The suggestion is that all hearings of tribunal should be in public unless the tribunal considers, on the application of a party, that the hearing should be in private. The ground for a private hearing would be that the enquiry was concerned with the personal circumstances of the party concerned or might unfairly affect his professional reputation. (Everybody concedes that, if reasons of public security require it, proceedings should be held in private, but this rarely arises.) In my opinion this suggestion goes too far in the case of such tribunals as the national insurance and national assistance tribunals. There seems little doubt that persons appearing before such tribunals prefer the proceedings to be in private, and it is difficult to see why they should not have what they want. Any danger of injustice arising through secrecy, which is very remote in fields where the interests of working people are looked after by the trade unions, would be avoided by giving the appellant or claimant a right to require a public hearing. It seems to me that the onus should be this way rather than that he should have to ask for a private hearing, with the implication that he has something to conceal.

In proceedings where professional reputation is at stake, e.g. a doctor employed in the national health service or the schoolmaster of an independent school, the problem is more difficult. Here it is not just a question between the citizen and a Government department, because the interests of the doctor's patients and the schoolmaster's pupils (actual or potential) are affected, whether they are represented in the proceedings or not. The public interest is therefore not wholly met by ensuring that the professional man should have the right to a public hearing if he wants it, and that otherwise it should be in private. Nevertheless I feel that it would be hard on the doctors and other professional men to deny them the right to a private hearing, and that the public interest does not require this. My submission here is that the hearing should be in public unless the professional man asks for it to be in private.

(b) *Legal Representation*

The suggestion is that legal representation should be allowed in all cases. It is difficult to argue, in principle, against the proposition that a man should always be allowed to employ a lawyer at his own cost to present his case in a legal proceeding. It is said that even in the simplest fields, the difficult point arises

occasionally which can only be put adequately by a lawyer, and this is undeniable. In most cases, however, a party to proceedings before the " poor man's " type of tribunal may not be able to afford a lawyer, and this brings in the question of legal aid. If legal aid were extended to this very large field, it might become quite a common practice to employ lawyers, mainly at the expense of the state, and this would in my opinion be a great waste of money and of time. Everybody admits that many such tribunals work very well without legal representation, and that the chairman of the tribunal does his best to elicit all points in favour of the appellant. My conclusion is that it may be right to remove the ban on legal representation, but not to make legal representation freely available by a general extension of legal aid.

(c) *Procedure at Hearings*

I agree with the suggestion that certain fundamental matters should be secured in proceedings before administrative tribunals, viz. that the parties should know the case that they have to meet and should have an opportunity of challenging all the evidence tendered by the other party, and attending any inspection or view by the court. On the other hand, if persons are to be able to appear in person, the procedure should not require them to be bound by preliminary written statements of their case, as parties in an action are bound by their pleadings, nor should it be such as to make it difficult for them to state their case at the hearing in their own way. This latter consideration involves leaving the chairman with a good deal of latitude in the actual conduct of the hearing.

Rights of Appeal

4. I have already expressed in my memorandum of evidence my view that, with certain possible limited exceptions, an appeal on questions of law should lie to the High Court or the Court of Appeal from administrative tribunals dealing with judicial matters, but that there should be no such appeal on questions of fact. I have little to add on this subject, but I would like to comment on two proposals put forward for giving further rights of appeal from administrative tribunals of first instance to an appellate tribunal.

5. There is first the proposal of Professor Robson(1) that there should be a general appellate tribunal with jurisdiction to hear appeals on fact and law from all administrative tribunals. The proposal is part of a comprehensive scheme for establishing a self-contained system of administrative justice separate from the ordinary courts of law, and I do not propose to repeat the well-known objections of Dicey and others, with which I agree, to any such system. There is also in my opinion the strong practical objection that a general appeal tribunal cannot possess or acquire the special qualities and expertise which are a large part of the justification of administrative tribunals, and that the better course is to provide special appellate tribunals, such as the Insurance Commissioner and the Transport Tribunal, where they are needed.

The Bar Council(2) witnesses suggest that there should always be an appeal on merits from tribunals of first instance. There may be some difference of opinion here as to the meaning of this phrase. I would regard a tribunal such as the Independent Schools tribunal as exercising an appellate jurisdiction in respect of a quasi-judicial decision (in the widest sense) of the Minister of Education. *A fortiori* I would regard an agricultural land tribunal as a court of appeal from the county agricultural executive committee. In both cases I would think any further appeal from decisions which are largely policy decisions quite inappropriate. Other tribunals from which there is at present no appeal on merits seem to me, broadly, to be analogous to arbitrations, e.g. the Lands Tribunal in its original jurisdiction and the tribunals concerned with questions of compensation for loss of office and superannuation questions. An appeal on a point of law seems plainly right in these cases, but not an appeal on the merits.

I do not think I can usefully comment on what is probably the crucial question whether there should be an appeal on merits from the rent tribunals.

(1) Days 13–14. (2) Days 17–18.

Systematisation of Tribunals

6. The proposals of Professor Robson and the Society of Labour Lawyers[1] for amalgamating and systematising administrative tribunals do not necessarily depend on the exclusion of the supervisory jurisdiction of the High Court. There are obvious attractions in the idea of reducing the numbers of tribunals and simplifying their structure. I do not propose to comment on the details of the proposals, but I have three general observations to make.

(*a*) It is obvious that the more you extend the jurisdiction of administrative tribunals, the more you dilute their virtues of expertise and aptitude to deal with their particular field. For example the jurisdiction in respect of national insurance is substantially different from that in respect of national assistance.

(*b*) If you set up tribunals with wider jurisdictions concerned with the functions of several departments, who is to be responsible for them? Presumably, in England, the Lord Chancellor, although Professor Robson does not advocate this. This means taking away the responsibility from the department which, as I have suggested, is best able, from the practical point of view, to discharge it. It may also tend to remove the tribunal from the sphere of effective Parliamentary criticism, to give it something of the political immunity of the judiciary proper. This may be right in the case of some tribunals, e.g. the Lands Tribunal exercising a strictly judicial jurisdiction in a judicial way, but I doubt if it is right for tribunals such as the agricultural land tribunals which deal with policy matters or even for the national insurance tribunals who play a large part in the machinery for administering the main state welfare scheme. I am aware that all the members of agricultural land tribunals are now appointed by the Lord Chancellor, but this seems to me a bad precedent which should not be followed. In fact I am reluctant to disturb the satisfactory type of "Ministerial" tribunal, linked with the administering department but with its independence safeguarded both by the supervisory jurisdiction of the High Court and the Minister's responsibility to Parliament and the public.

(*c*) One result of amalgamating tribunals would be to make membership of the tribunal or at any rate the post of legal chairman more of a whole-time occupation. At present legal chairmen are largely recruited from retired lawyers, and from practising lawyers, especially local solicitors, who are prepared to give part of their time to this work for a very modest remuneration. The other members are found among people willing to assume a share of responsibility for administering statutory schemes of social welfare. The work is done without great expense, and attracts people of public spirit, and there is absolutely no evidence, in the case of the great majority of tribunals, that the results are unsatisfactory. I am doubtful whether it would be a good thing to substitute a more professional type of tribunal, with a whole-time chairman who would have to be paid a salary comparable to that of a stipendiary magistrate, and with a more extensive jurisdiction which would make it difficult for the part-time layman to play his part.

I do not want to give the impression that I think there is no room for improving and simplifying the present situation. For example the different systems of adjudicating national insurance claims and family allowance claims seem quite unnecessary, and there are no doubt other inconsistencies and discrepancies the removal of which would substantially improve the general picture.

Standing Council on Administrative Tribunals

7. For this reason I welcome the proposal for a Standing Council who would keep administrative tribunals and their procedures under review. I think the Council would have to be advisory since their recommendations might involve legislation or subordinate legislation and would in any case have to be put into effect by Ministers. Mr. Wade's idea of a court or an institution on the lines of the Conseil d'Etat would obviously involve a radical departure from present constitutional ideas, and would seem to lead towards the continental system of administrative justice.[1]

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[1] Days 13–14.

My view is that an advisory Council would he able to put forward useful, hut limited, reforms of present tribunals, and to provide a valuable guiding influence for the future.

ENQUIRIES

Appointment and status of inspectors

8. The witnesses representing the Bar Council(1) and the Law Society(2) and other witnesses advocate the creation of an inspectorate appointed hy the Lord Chancellor and independent of the departments responsible for holding enquiries. In my memorandum of evidence I suggested no change in the present system whereby inspectors are appointed hy the departmental Ministers and may he members of the department concerned, but I indicated that this suggestion was based on the assumption that inspectors' reports would not he published. I have now considered the question in isolation and have formed the view that, even if inspectors' reports are to be published, it ought still to he possible for a department concerned with very numerous inquiries, like the department of Housing and Local Government, to keep their own expert inspectorate as part of the department. There seem to be two main grounds for this :—

(*a*) The primary purpose of the enquiry is to inform the Minister's mind so that he can reach the right decisions. He has the greatest interest in seeing that the inspectors appointed to hold enquiries are as competent as possible and provide him with impartial reports on all relevant facts. Even those Ministers who at present appoint outside professional men to hold enquiries can satisfy themselves as to the competence of the persons they appoint. It seems to me wrong in principle, and unwise for practical reasons, to take this responsibility away from the Minister of the department charged with the statutory functions for which the enquiry is required. The idea put forward hy some witnesses of an inspectorate with almost the independent status of judges seems to me quite incompatible with the administrative nature of the process.

(*b*) The departmental inspector's knowledge of policy is a valuable factor. As has been said, it makes the hearing more like a hearing by the Minister than otherwise would he the case. I shall not labour this point which the Committee obviously appreciate. The fact that some departments employ outside inspectors obviously weakens the argument. So far as England is concerned, the reason for the practice of the Ministry of Education is a historical one, and I think it is true to say that the need for an inspector with knowledge of the policy is more obvious in the wide and complicated field of town and country planning than in connection with the choosing of sites for schools.

Publication of inspectors' reports

9. The various witnesses who have argued in favour of the publication of inspectors' reports have not, I think, produced any new arguments, and I do not propose to repeat the familiar arguments on the other side. In my memorandum of evidence I suggested that, if the Minister's reasons included findings of fact on all disputed matters, that would meet a large part of the criticism of the present practice. I would like to make a suggestion which takes the matter a little further. It seems to me that one of the considerations which particularly impresses the Committee is the need for ensuring that the Minister's decision is taken on a correct basis of fact, and for this reason they seem to favour the prior publication of inspector's reports so as to give an opportunity for interested parties to correct any errors of fact. My suggestion is that the Minister should furnish to the parties his provisional decision, with full findings of fact, and give them an opportunity to make representations on those findings. It is really more satisfactory to the parties to be ahle to make their final comments on a document representing the Minister's provisional views, rather than on the inspector's report which, under our system, cannot he more than a recommendation. This point hecomes even stronger if, as I think, the publication of

(1) Days 17–18. (2) Days 15–16.

the inspector's report would mean that it would have to stop some way short of a recommended decision. On the other hand prior publication of the Minister's decision would in my opinion ensure a full statement of his findings and give an adequate opportunity for the correction of errors of fact.

I only put this suggestion forward as an alternative preferable to the prior publication of inspectors' reports. Both alternatives have the serious practical drawback of causing further delay, and may in general overburden the machinery for giving effect to the social purposes of the Acts of Parliament concerned. It is essential that neither should result in a general re-opening of the subject of the inquiry, and it ought to be sufficient for the Minister to consider separately the comments of each party, and reach his final decision without further debate. Only if it appears to the Minister that the comments of one party disclose new facts which are likely to affect his decision and may be disputed by the other parties, ought he to be under any obligation to notify the other parties. This is in accordance with the general principle, which the Committee appear to favour, that when new material facts emerge after the inquiry, the parties should be given an opportunity of commenting upon them.

Government evidence at Enquiries

10. Many witnesses have urged that Government departments initiating proposals which are the subject of so-called "enquiries into objections" should give evidence in support of their own proposals; and that other departments whose views or advice are relevant to the issues which are the subject of any enquiry should also give evidence. Most witnesses agree that only evidence on matters of fact or expert opinion, and not of policy, should be subject to cross-examination, but obviously they, and the Committee, feel great difficulty about the distinction between fact and policy. So of course do I, and I submit that the right course and the only practicable course is to leave it to the Minister. The change must be one of Government practice, and not of legal obligation. If Ministers undertake to see that enquiries are as exhaustive as possible, so far as factual and technical matters are concerned, that is the kind of undertaking which can be enforced by Parliament with reasonable effectiveness. A statutory definition would not only be virtually impossible but might result in decisions being open to challenge in the courts on the ground (quite inappropriate to an administrative decision) that the evidence was insufficient to support the finding or, more simply, that the case was not proved.

11. Some witnesses have also suggested that Government departments, including the "adjudicating" department at an enquiry into proposals or decisions of a local authority, should define the relevant policy considerations in advance so that objectors would be able to estimate their chances of success and direct their efforts in the most likely directions. The Bar Council witnesses[1] appeared to admit that it would only be possible to define policy in this way in comparatively rare cases, and that is certainly my view. I agree that it is always a good thing for Government departments to make their general policies as widely understood as possible, but I cannot see how a Government department can, for the purposes of an enquiry held by itself or by another Government department, define its policy towards the particular proposal which is the subject of the enquiry without either being quite unhelpful or prejudicing the issue. This seems a particularly difficult idea in the case of an adjudicating department which ought to approach the enquiry with an open mind and without prior formulation of its views.

The Bar Council witnesses seemed, on second thoughts, to feel the force of this argument (Question 3735) which, I think, largely destroys the analogy drawn in their memorandum with the procedure on private Bills. Under that procedure the responsibility of decision is effectively that of Parliament, and statements of policy by Government departments, even when they go to the root of a proposal, cannot, to use Mr. Lawrence's phrase, state the proposer (or objector) out of court. But when a Minister has the final responsibility of

(1) Days 17–18.

decision, statements of policy affecting the issue, especially by his own officials, must inevitably limit the objector and fetter the Minister.

12. The distinction between facts and expert opinion and policy is perhaps most difficult to draw in the situation arising out of planning procedures. The Minister of Transport may veto planning permission for development near a trunk road, and the Minister of Agriculture may express to the planning authority a strong opinion against permitting development on agricultural land. One cannot deny that in such cases the departments have shown their hands, and yet it remains possible that they may be overruled by the Minister of Housing and Local Government on appeal. The practical course, as I have already suggested, seems to be to let the Ministry of Transport road experts and the Ministry of Agriculture's agricultural experts give evidence about the technical nature of the traffic problem or the agricultural qualities of the land concerned, without making any general statements of policy or restating their view on the proposal or decision under enquiry.

Consultations after enquiry

13. The Chartered Surveyors,(1) the Bar Council(2) and possibly other witnesses have suggested that the Minister holding an enquiry should consult with his advisers and colleagues before and not after the enquiry, which would largely obviate any necessity for re-opening the enquiry to consider new matters arising after the enquiry. I agree with this in cases where the Minister is the initiating authority, and I should think that it would be the normal practice to clear a proposal, e.g. for a trunk road, with other interested departments before the enquiry is held. Even so, it might be necessary to hold further consultations in the light of new facts and expert evidence given at the enquiry, and the department responsible for the enquiry would always hold internal consultations on the inspector's report.

Where the Minister is the "adjudicating" authority, I feel that it is quite impossible, for the reasons already mentioned, for him to hold prior consultations on the subject-matter of the enquiry. In such cases—the great majority—it is therefore inevitable that the consultations should take place after the enquiry.

14. Generally speaking, witnesses agree that the Minister must be free to consult with his advisers and colleagues on matters of policy, but that if further relevant facts or opinions on technical matters differing from those expressed at the enquiry emerge, the parties should be given an opportunity to comment or the enquiry should be re-opened. Here again, there is the difficulty of drawing the line (see the answer to Question 2558), and again the only practical solution seems to be to leave it to the Minister, with Parliament as the watchdog. If the procedure is not to get out of hand and the Minister is not to be put into a strait jacket, it seems to me essential that the Minister should have a discretion to decide whether the further facts and technical considerations constitute a new factor likely to influence his decision. Obviously, if his reasoned decision is to include full findings of fact, he will not be able to rely on any new fact without giving the parties an opportunity to challenge it.

Appeal to a Parliamentary Committee

15. I feel that I ought to comment on the proposal for an appeal to a Parliamentary Select Committee, which played a considerable part in the Bar Council's thinking on this subject. My first comment is that I am much impressed with dilemma posed by Mr. Pritchard in Question 3782. It is difficult to believe that a Parliamentary Committee can provide a practical court of appeal on merits, if one is required, over the immense field now covered by administrative enquiries. His account of the special orders procedure and the special Parliamentary procedure bears this out.

My second comment is that, as a matter of history, this type of procedure has been largely abandoned in the field of social legislation, and I do not think that it is possible to put the clock back. The procedure developed in the nine-

(1) Days 11–12. (2) Days 17–18.

teenth century, in connection with the growth of the railways and other public utilities, and was appropriate (apart from expense and delay) to decide issues between commercial companies and private individuals, in which no doubt the public interest was involved but the Government had little direct responsibility. I doubt whether, in such fields as public health, housing and town and country planning, it would now he possible for the Government to resign ultimate responsihility to a Parliamentary Committee. I am aware that "special Parliamentary procedure" figures in the Town and Country Planning Acts and the compulsory purchase codes, but only in marginal cases where special interests such as those of statutory undertakers are concerned, and not so as to play a main part in the machinery for carrying out the purposes of the Acts concerned.

General Council of the Bar

SUPPLEMENTARY MEMORANDUM

Note: Submitted in response to questions 3680, 3833-4 of the *Minutes of Evidence* (Days 17-18).

A. Procedure leading up to a Ministerial Decision

(i) An inquiry would he conducted by an Inspector who should not he drawn from the staff of the Department concerned: Inspectors should be persons independent of any such Department. They should be paid out of central funds and, if it is thought desirahle, drawn from a panel created for the purpose.

(ii) Procedure at the inquiry should generally resemhle the normal procedure of the courts of law without insistence on technicalities such as the rules of evidence. The onus should lie upon those who propound a scheme to support it by evidence and to submit to cross-examination. Parties should be entitled to be properly represented.

(iii) Any policy of the Department causing the inquiry to be held which is relevant to the suhject matter of it should be communicated in a written statement to the parties concerned in good time before the inquiry is held. Parties while necessarily attaching great importance to it should not he precluded from discussing the validity and applicahility of such policy in a particular case.

(iv) As a general rule all consultations between interested Departments should take place before and not after the inquiry. The views of Departments other than that causing the inquiry to be held, if they have any interest in the matter, should be emhodied in a report which should be available to the parties concerned hefore the inquiry. Parliamentary practice in the case of Private Bills should he followed; i.e. Departmental Reports should be available to all concerned; an officer from the Department making such Report might be asked by the Inspector to expand what is contained in it; questions could he put to him only hy lcave of the Inspector, but the officer would not he suhject to cross-examination.

(v) The Inspector's report of the inquiry should contain his findings; a summary of the contentions of the parties; his recommendations and a statement of his reasons for it. This report should be made available to the parties in draft form and a reasonahle period of time should be allowed for the submission by the parties of any correction of manifest errors or omissions of fact in the report. The report when complete should also be available to the parties and to the Press.

(vi) Save in exceptional cases the Minister should not seek further to inform himself about the matter after the inquiry is closed. If additional information reaches him through extraneous channels which materially influences his mind, the parties should be informed of it and given an opportunity to submit observations upon it.

(vii) This raises the question as to the nature of consultations which the Minister may properly have in arriving at his decision. A distinction is to be drawn between, on the one hand, seeking for new facts or expert opinion in

addition or in regard to matters which have been dealt with in evidence at the inquiry and, on the other hand, discussion between heads of Departments or even with the Cabinet, in the light of ascertained facts as a matter of policy; namely of a course of action then deemed to be expedient.

In regard to the latter, the Minister must be entitled to arrive at his decision in the light of discussion of such policy. In regard to the former, the parties should be informed of any such additional information because it may well be susceptible to comment and cross-examination. This type of consultation is exemplified by the facts in *Errington* v. *Minister of Health* (1935) 1 K.B. 249, and by the demand (Day 5, p. 123 Q. 1004), that the Minister should be entitled to "seek advice from his own technical officers before making up his mind whether it is a good bet or whether it is not a good bet".

(viii) The Minister's decision should contain a statement of the facts and reasons on which it is based.

B. **Procedure on an Appeal on a Point of Law**

(i) There should be an absolute right of appeal to the High Court on any question of law.

(ii) A Notice of Appeal containing a statement of the grounds of appeal should be given within say 30 days after notification of the decision.

(iii) It is recommended that the appeal should be by motion to a nominated Judge of the High Court, from whom an appeal would lie to the Court of Appeal.

(iv) If, contrary to our expectation, it were thought that this procedure would result in there being a number of frivolous appeals, an alternative procedure would be by *ex parte* application to a Judge for an order *nisi* on the ground that a substantial point of law does arise. Costs are a deterrent to frivolous appeals.

October, 1956.

Country Landowners' Association

(*Note:* The letter below was submitted in response to questions 3451-2, 3454 and 3469 of the *Minutes of Evidence*, Days 15-16.)

24, St. James's Street,
London, S.W.1.

23rd January, 1957.

Dear Sir,

Further Evidence to the Committee

I refer to your letter of the 18th January.

As regards paragraphs 3451-2 of the report of the Association's evidence, although we have continued to make enquiries, we have not been able to find any specific cases where objection has been taken to the Inspector visiting the site accompanied by only one of the parties. With reference to paragraph 3454, as mentioned in my letter of the 22nd August there appears to have been some improvement in recent years and we cannot give examples of recent cases where the sufficiency of the Minister's reasons for his decision has been questioned.

On the question of objectors' costs (paragraph 3469), the Association feels it would not be feasible to ask for these to be paid on a certain scale in every case. But it is considered that in all cases the Minister should have the discretion to make such an award after having had regard to all the circumstances, and that in announcing his decision the Minister should in every case make it clear that he has exercised that discretion.

Yours faithfully,
(*Signed*)
Assistant Legal Adviser.

The Secretary,
Committee on Administrative Tribunals and Enquiries.
Weavers House,
Stratford Place,
*London. W.*1.

County Councils Association

Supplementary Memorandum

1. Paragraph 7 of the Association's memorandum of evidence[1] emphasised the need for the appropriate Minister making public the reasons upon which he bases his decision following the report of an inspector. The Association welcomed the practice now being adopted by the Ministry of Housing and Local Government in this connection.

2. It is evident from the memorandum[2] submitted to the Committee by the Ministry of Fuel and Power that this practice does not operate in connection with inquiries held by that Department and the Association's attention has been drawn to a recent case in West Sussex which illustrates the practice adopted by that Ministry to which the Association takes objection.

3. A copy of the Ministry's letter giving the Minister's decision is appended. The Clerk of the West Sussex County Council has commented as follows:—

> ". . . The argument in this case was as to whether or not a short length of line in the centre of a most attractive hamlet, bordering one of the main north-south roads through Sussex, should be laid underground. A very important point which emerged during the cross-examination of the Board's engineer was that a large part of the scheme under consideration (most of which, as I have implied, was agreed by everybody as an overhead scheme), would have to be carried out sooner or later by the Board as a link between two parts of their distribution system. It was grossly unfair to charge the cost of this part of the line to the small number of people who were actually going to be connected to the mains as a result of the scheme immediately under consideration. If this necessary link was excluded from the work for which the consumers in question were being called upon to pay, the contribution which they had already agreed to pay would more than cover the extra cost of laying the small length which the Planning Authority wanted underground. As you will see, no reference whatever is made to these arguments in the Ministry's decision letter."

4. The Association request that in the light of the above information and the Department's stated policy not to publish reasons for their decisions, the Committee should give particular consideration to the practice and procedure of this Ministry whose written memorandum it is understood has not been the subject of oral evidence to the Committee by representatives of the Department.

Ministry of Fuel and Power

Ref.: EL 82/2/3080

Your ref.: Planning Reference:
CW/1-PR/1/56

Electricity Division.
Thames House South,
Millbank,
London, S.W.1.

10th October, 1956.

Sir,

Electricity Act, 1947

Electricity (Supply) Acts, 1882-1936

I am directed by the Minister of Fuel and Power to refer to the application of the South Eastern Electricity Board for his consent under Section 10 (*b*) of the Schedule to the Electric Lighting (Clauses) Act, 1899, to the placing of certain electric lines above ground in the parishes of Coldwaltham and Parham and to the Hearing conducted on his behalf by Mr. W. L. M. French, A.M.I.E.E., M.Inst.Fuel at the Village Hall, Pulborough on the 22nd August, 1956, into the objections of

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(1) Days 11–12, pp. 421–2.
(2) *Memoranda submitted by Government Departments*. Vol. VI, pp. 23–41.

tbe Chanctonbury Rural District Council and of the West Sussex County Council to tbe proposals.

I am to state tbat after careful consideration of Mr. Frencb's report of the Hearing and of all the circumstances of the case the Minister bas decided not to upbold tbe objections of the Councils and has issued his formal consent to tbe placing of tbe lines by tbe Board as proposed along the route shown on Drawing No. SK/9125M.

A copy of tbe consent issued to tbe South Eastern Electricity Board is herewith.

I am, Sir,

Your obedient Servant,

(Sgd.) M. C. CAMPBELL,

An Assistant Secretary to the Ministry of Fuel and Power.

Federation of British Industries

Challenging compulsory purchase orders on grounds of bad faith

(*Note:* The extract below is from a letter, dated 5th July, 1956, wbich the Federation wrote to the Committee. It refers to their previous evidence, *Minutes of Evidence*, Days 11-12, page 440, para. 32, and questions 2711-5.)

May we make a furtber observation about a matter wbich was discussed during tbe oral evidence to tbe Committee. The Federation's representatives were questioned about tbe paragrapb in its memorandum regarding the making and confirmation of Compulsory Purchase Orders. The Federation's view was that on proof of fraud or of bad faith on the part of tbe acquiring authority it should always be possible to rescind the order even after the statutory period for challenge had expired. Sir Geoffrey King in querying the effect of such a proposal gave us an example that a town hall once built would be liable to suffer removal if an aggrieved party came to the Court witb evidence of fraud on the part of the acquiring authority. The Federation's representatives admitted the serious consequences wbich could flow from their suggestion, nevertbeless further reflection bas led to the conviction that relief should never be barred if misrepresentation can be proved. Whether or not rescission of the order is granted, and the former owner reinstated or compensation is awarded must be a matter for the discretion of the courts. If a party with knowledge of the misrepresentation sits idly by until the last brick of the town ball has been placed in position tbe court is unlikely to interfere by way of rescission of the order. At the other extreme if the land is required as an open space, and the aggrieved party applies for relief immediately upon discovering misrepresentation or lack of good faith on the part of the acquiring autborities there may be strong grounds for rescinding the order. The form of redress ougbt properly to remain with the courts, but we feel that they sbould not be barred from rescinding the order.

Application under the Mines (Working Facilities and Support) Act, 1923

(*Note:* Submitted in response to questions 2646–7 of the *Minutes of Evidence*, Days 11–12.)

During the course of giving oral evidence to the Franks Committee tbe Federation's representatives were asked to give an indication of the number of applications made annually to the Chancery Division of the High Court under tbe Mines (Working Facilities and Support) Act, 1923.

Enquiries bave been made and it has now been ascertained that over the period 1948 to July, 1956, some 36 cases have come before the Court. Some 6 of these are attributable to coal, tbe rest relating to other minerals—in addition tbere are one or two applications still awaiting transmission to the High Court.

If a cheaper and more expeditious tribunal is set up to deal with these types of case there is little doubt that mineral operators would make readier use of the procedure offered by the Act. The existing machinery is regarded generally as both cumbersome and expensive and discourages operators unsuccessful in private negotiations for the rights in question from bringing cases before the court which in the national interest and subject to planning control should properly be a matter for the court's consideration.

29th August, 1956

Lands Valuation Appeal Court

(*Note:* Submitted in response to questions 2653–4 of the *Minutes of Evidence*, Days 11–12.)

The F.B.I. witnesses were asked to re-examine their statement concerning the Lands Valuation Appeal Court in Scotland. The matter was referred to the persons concerned with rating and valuation who have instructed us to transmit to you the following statement:—

> The appeal structure in Scotland differs from that in England and Wales. In Scotland there is no equivalent to the Lands Tribunal. In lieu, on rating matters appeal from the Valuation Appeal Committees on questions of value, or on questions incidental to questions of value, is to the Lands Valuation Appeal Court by way of stated case.
>
> Although the procedure of appeal is not in all respects satisfactory and, in the F.B.I.'s opinion, could be improved, it is desired to retain the right of appeal. The Lands Valuation Appeal Court being a Court of Law, it was necessary to make exception to the general principle expressed in the written memorandum.

29th August, 1956

The Law Society

SECOND MEMORANDUM OF THE COUNCIL OF THE LAW SOCIETY

(*Note:* Submitted in response to question 3601 of the *Minutes of Evidence.* The first memorandum of the Law Society is printed in those *Minutes* (Days 15–16, pp. 615–641).)

Introductory

1. This Memorandum is submitted by the Council of The Law Society in response to a request by the Departmental Committee for the Council's recommendations on procedures of appeal from administrative tribunals and enquiries. In their First Memorandum, which reviewed in broad terms certain of the more important tribunals and enquiries, the Council recommended (*inter alia*) that, as a matter of general principle, there should be a right of appeal to the Courts from decisions made by tribunals or as a result of enquiries, upon a point of law or upon any substantial defect in procedure. This recommendation was closely related to the Council's further recommendation that a code or codes should be issued under the authority of the Lord Chancellor to regulate procedure, not merely in the narrow sense of the proceedings at a hearing, but also in the broader sense of all the steps required to be taken upon the reference of any dispute or issue for decision by a tribunal or under an administrative procedure.

2. If this further recommendation were to be accepted, a right of appeal to the Courts could be given to a party who was aggrieved by a substantial failure to observe the code, whether by a tribunal or in the course of an administrative procedure. But even if their recommendation for a code were not to be

accepted, the Council consider that an extended right of appeal should still be made available when there is substantial disregard of the general principles set out on pages 3 and 19 of the Council's First Memorandum.

3. The object of the present Memorandum is to recommend a solution of the problem of control which would result from an extension of the right of appeal, and the approach to the problem adopted for this purpose has been as follows:—

(1) To consider in which Courts the appropriate jurisdiction of control could most effectively be exercised over administrative tribunals and procedures.

(2) To analyse the extent to which control should be applied.

(3) To recommend the methods and procedures which should be provided to operate the jurisdiction of control.

4. The Council are of the opinion that there is no single means of control which could properly be applied to all tribunals and enquiries. They believe, however, that control procedure should be as simple and as cheap as possible, consistently with the requirement of securing just treatment for each case.

Appeals on Questions of Law from most Administrative Tribunals

5. The Council feel that there is no need to alter existing procedures of appeal on questions of law from administrative tribunals in those cases where such existing procedures can be considered satisfactory either because they give resort to a court of law or because they are otherwise sufficiently complete in themselves as separate administrative systems; perhaps a majority of the different kinds of tribunals would fall into this category of tribunals for which suitable provision has already been made. The Lands Tribunal, from which there is a right of appeal on points of law to the Court of Appeal and thence by leave to the House of Lords, is an example of a tribunal which has the first type of satisfactory appeal procedure; and the National Insurance complex of tribunals illustrates the second—appeals go from insurance officers to local appeal tribunals and thence to a Commissioner, or, from a decision of the Minister on "special questions" by case stated to a Judge of the High Court. In both cases the Council see no need to graft further stages of appeal upon points of law on to existing systems which are already self-contained and reasonable in this respect. The Council's recommendations relating to appeals on questions of law from tribunals where there is at present no resort to a court of law, or where the procedures are not sufficiently complete in themselves, are contained in paragraph 16 of this Memorandum.

Appeals on Questions of Law from Decisions following Administrative Procedures

6. With regard to such appeals the Council take the opposite view to that stated in the foregoing paragraph; they submit that any existing statutory rights of appeal or application to the Court should be displaced, including any time limits at present laid down for such appeals. See also the Council's proposals below under the heading "Extent of Control."

Improved Controls for Jurisdiction and Procedure applicable to All Administrative Tribunals and Procedures

7. The Council consider that, except for the Lands Tribunal, all administrative tribunals and procedures should be made amenable to the improved controls for jurisdiction and procedure recommended below, and that these should similarly displace any existing statutory rights of appeal or application, including any time limits laid down for the latter and any provisions ousting the jurisdiction of the Court. Section 11 (2) and (3) of the Town and Country Planning Act, 1947 (Validity of Development Plans), and paragraphs 15 and 16 of the First Schedule of the Acquisition of Land (Authorisation Procedure) Act, 1946 (Validity of Compulsory Purchase Orders), illustrate the kind of limited right of application which the Council feel should be abrogated in favour of their present recommendations.

(1) **Courts of Control**

8. A recommendation was made in broad outline in the First Memorandum and supported subsequently by oral evidence, to the effect that control should be exercisable by the High Court in respect of both tribunals and enquiry procedures. The Council wish to affirm this recommendation, with the further proposition that the County Court might with advantage be used to complement the functions of the High Court.

9. It is clear that the High Court is appropriate for cases coming from the major tribunals. The same is generally true of decisions of a Minister or a Ministerial Department, so that such control as may be found requisite for decisions resulting from administrative enquiries can fittingly reside in the High Court. A Divisional Court of the High Court is particularly well suited not only to the decision of questions of law but also to the administration of procedural and jurisdictional remedies; it is recommended, therefore, that control at High Court level should be exercised by a Divisional Court. Provided that codes of procedure for tribunals and enquiries and the other general recommendations they have made are put into effect, the Council do not expect that a large volume of cases would follow the implementation of their proposal for control by means of a general right of appeal or application to the Divisional Court. It may be also that few of the cases likely to arise would be taken on points of law, and the majority would tend to be concerned with questions of jurisdiction or defects of procedure. The decision of the Divisional Court should be final, save on a point of law, when there should be a further appeal, with leave, direct to the House of Lords.

10. In suggesting that the County Courts might be given certain jurisdiction, the Council have been concerned with securing cheapness and simplicity, and convenience of transfer of proceedings from the sphere of the administrative tribunal to the sphere of the court of law. In the case of planning appeals and compulsory purchase decisions in particular (as referred to on page 632 of their First Memorandum), the aggrieved party should, the Council recommend, have the right to apply on questions of law to the County Court; and that Court should have power either to decide the appeal or refer it on the ground of importance to the High Court. By reason, however, of the status of the major tribunals, presently existing rights of appeal in the case of other tribunals, and the self-contained characteristics of the very large complex of National Insurance tribunals, it is evident that, apart from planning appeal and compulsory purchase decisions, the use which could be made of the County Court is perhaps somewhat limited. If, on the other hand, the Council's recommendation in their First Memorandum for transfer of Rent Tribunal jurisdiction to Local Valuation Courts were not accepted, and Rent Tribunals were to continue, then the County Courts could most effectively be given appellate jurisdiction in respect of these tribunals, from which no right of appeal exists at present. County Courts already control certain tribunals: for example, arbitrators under the Agricultural Holdings Act, 1948; the powers of these Courts could usefully be extended where necessary to deal with other minor tribunals.

(2) **Extent of Control**

11. The considerations of policy behind an administrative decision must remain a matter on which the Executive is answerable only to Parliament, and it must be for the Executive to say whether a reason for a decision involves policy. Thus policy as such should not be in issue before the Court, although perhaps its application to the facts of a case might be questioned.

12. The extent to which the Courts should exercise control must be found from analysis of the factors surrounding, and also those constituting, an administrative decision. The following brief analysis deals with the subject-matter not solely in terms of the present law, but of the law as the Council have recommended it should be; and the intention is to show how an administrative decision should be open to challenge as being wrongly made in itself or wrongly arrived at as a result of defective administrative proceedings.

13. In the first place, a decision might be challenged on the ground of want of jurisdiction, if it were *ultra vires*, or if it were not made in good faith for the purpose for which the jurisdiction was conferred.

14. Second, a decision might be challenged as an abuse of procedure if it infringed the Rules of Natural Justice (which the Council have said should apply so far as possible to all decisions of tribunals and those following enquiries). These Rules were stated by the Donoughmore Committee in general to be as follows :—

(1) A man may not be a judge in his own cause ; it is unfair that a decision should be made by a person who is likely to be biased.

(2) No party ought to be condemned unheard ; and he must know in good time the case which he has to meet.

(3) A party is entitled to know the reason for a judicial or quasi-judicial decision.

(4) The Inspector's report upon a public enquiry, local or otherwise, should be made available to the parties.

There would also, in accordance with the Council's earlier recommendations, be an infringement under this head if codes of procedure in both the general and the restricted sense and various additional rules (set out on pages 617 and 632 of the First Memorandum) were not complied with.

15. Third, the decision itself might be split into its constituent elements of law, facts and policy, and challenged in respect of these.

16. Taking the elements referred to in paragraphs 13 to 15 for convenience in reverse order, the Council recommend that, subject to the provisions of paragraphs 5 and 6 above, there should be an appeal to the Court against an administrative decision (whether by a tribunal or following some procedure) on all questions of law, whether or not appearing on the face of a record, and that here the Court should have power to endorse or to quash the decision, or to substitute its own decision for the original one, or to order the case to be re-heard by the tribunal or department concerned or by some other body.

17. While the Council do not favour the conferment of a general power on the appellate Court either to rehear the case or to substitute other findings of facts, there may be no sufficient evidence on a particular case upon which a reasonable person could come to the conclusion which was reached. Accordingly the Council recommend that the Court should have power to review the findings of fact in all cases for the purpose only of deciding whether the findings were reasonable upon the evidence. There should also be power to review reasons given for a decision, where these derive from inference of fact, to decide whether the inference is legal, i.e., reasonably deducible from the evidence.

18. The Council's views on the policy factor have already been stated at the beginning of this Part.

19. In the case of abuses of procedure or jurisdiction, the Council consider that the appropriate steps requisite for control are to review the decision and the circumstances in which it was made, and consequently to quash it or endorse it or to order the case to be re-heard by the offending tribunal or department or by some other body. Such powers of control should, they recommend, be exercisable in all cases only by the High Court.

20. The powers of the Court should not be excluded by any existing statutory provision purporting to give a Minister or other person or body a subjective discretion. But it is suggested that a general time limit of three months should be imposed on all administrative remedies.

(3) Methods of Control

21. After carefully considering what methods of control they should recommend, the Council are of opinion that there is much to be gained by avoiding the establishment of novel or untried systems, and by retaining certain existing remedies improved and made more effective, where possible, by simplification

of the steps required to be taken and by a widening of the application of these remedies.

22. In general the Council have in mind three standard methods of control: the appeal by notice of motion supported by affidavit and the appeal by way of case stated, for questions of law; and the prerogative order of certiorari for abuses of jurisdiction and procedure.

23. For appeals on pure questions of law and such cases as are mentioned in paragraph 17, the Council recommend that case stated should apply in the High Court, or where appropriate (and following the precedent of the Agricultural Holdings Act, 1948), in the County Court. As between the High Court and the County Court, the latter is perhaps better fitted to deal simply and cheaply with any appeal to which this paragraph applies and which arises from the less important tribunals, and from planning appeal and compulsory purchase decisions of local rather than national importance, particularly if the Court is accorded the procedural power which is recommended below in paragraph 28.

24. The main criticisms directed at case stated appear to be related to the complexity of pleading and the length of time sometimes taken to procure the statement; improvement would follow if formalities could be diminished, and subject to an effective sanction, a time limit imposed within which the statement would have to be submitted, and if the Court were given a general power on application to order a case to be stated. A Practice Direction recently issued by the Master of the Rolls with regard to appeals to the Court of Appeal by way of case stated under Order LVIIIA is a step (albeit a limited one) towards the achievement of what the Council have in mind.

25. Where there is any serious obstacle to the production of a statement agreed between the parties, then the appeal should be made in the High Court by notice of motion supported by affidavit, or in the County Court, in which latter case the appeal could most conveniently be made upon affidavit.

26. Where questions of abuse or excess of jurisdiction or procedures or any other irregularity are in issue following a decision, the Council recommend that the appropriate solution is certiorari—which is already the recognised remedy for this class of case—provided that it is extended and improved so as to be effective in the wider sphere to which it is now suggested it should apply.

27. Certiorari is perhaps a relatively expensive remedy, but the Council do not expect it will be required in many cases. The effect of its availability in the background should be greatly to diminish the number of abuses likely to be committed; and again it is no argument that there should be no right, or merely a reduced right, to justice in this limited number of cases, simply because full justice would be expensive. The procedure of certiorari is, the Council believe, well developed and effective, and the defects of this remedy are rather to be found in the limitations of its scope. The Council recommend that the scope of certiorari should be considerably extended by bringing all actual administrative decisions within its control in respect of excess or abuse of jurisdiction or procedure (as interpreted by the Council in their First Memorandum and in Part 2 of this Memorandum). The existing limitation of certiorari to control of defects on the face of the record should be removed.

28. In all cases where the Courts are to exercise control over administrative decisions, it appears to the Council that, whatever the degree and method of control, the Court should always have power to call on the body which has made a disputed decision for a statement (A) of the decision itself, (B) of the facts on which it was based and (C) of the reasons for it.

October, 1956.

National Citizens' Advice Bureaux Committee

SUPPLEMENTARY EVIDENCE

(*Note:* Submitted in response to Questions 3285–6 and 3292, Days 15–16)

Cases illustrating points made on:

(1) *Incomplete Tribunals* (*Question* 3286)

(2) *Legal Representation* (*Question* 3292)

We quote the case of Miss C. in some detail since it illustrates both the points made.

Miss C. consulted the C.A.B. for help in appealing against the refusal of her claim to Sickness Benefit. It should be appreciated that this client is typical of the majority of our callers on this type of problem—not a member of a Trades Union or professional association and unable to look to any other body for help or advice.

Our client wished to appeal against refusal of benefit for a period of sickness lasting twelve months. It was necessary to establish two points:

(1) That she had been ill for the period claimed.

(2) That she had good reason for failing to make the claim within the prescribed time.

The appeal was of considerable importance to the client as she was in her late 50's and her right to retirement pension could be affected by the decision.

The client had been suffering from acute nervous debility resulting in an inability to concentrate, think coherently or manage her affairs. During two or three difficult interviews the C.A.B. extracted the history of the past twelve months and established and confirmed that although she had not attended a doctor she had attended hospital as an out-patient and had been cared for by various friends who gave statements as to her condition.

The hearing was before an incomplete Tribunal. The client succeeded in her point that she had in fact been ill (primarily because of the documentary evidence produced by C.A.B.) but did not succeed on her point that she had good reason for failing to make her claim within the prescribed time.

On returning to report to the C.A.B. the client said she wished she had not agreed to the incomplete Tribunal but had been anxious to get the "ordeal" over. She had felt that the one member who had asked her questions was impatient with her halting answers and the other member had asked no questions at all. The client then volunteered the information that she wished the C.A.B. Poor Man's Lawyer could have been there with her since she felt sure he would have had a better hearing and would have been better able to make the point that the very nature of her illness was the reason for not making the claim within the appropriate time. The point made against the client was that she had made a claim to benefit on a previous occasion and so knew the regulations.

It would seem to us that the very fact of having had previous experience of making a claim to benefit supported the argument that her failure to do so on this occasion was because of the nature of her disability. It does, of course, require some mental agility beyond that of our average client, to take advantage of these loopholes in argument.

Leave to appeal was not granted and was refused on request.

Case illustrating client's feeling of need for representation:

(*Question* 3292)

This client, like the previous case quoted, was not a member of any Trades Union or organisation able to help or advise her.

Client was a widow with a son of school age—in receipt of 10s. widow's pension. For a long period she had had accommodation difficulties.

Our client was approached by a man she had known some years previously. He told her he was T.B., bad spent some two years in sanatorium—be could be discharged and accommodation found for him providing he had someone to look after him. He asked our client to sbare his home and act as his Housekeeper, our client agreed to this since it solved her housing difficulty. Client continued to draw ber 10s. pension.

After some considerable time and arising out of an application for assistance to the National Assistance Board, when the client freely declared that she was in receipt of widow's pension, the pension book was impounded and the client told that in the official view she was co-habiting. Later this opinion was confirmed and the client asked to repay a sum of £104. The client wished to appeal against this decision. Again this client bad to establish two points:

(1) That she had drawn the pension in good faith believing that she was entitled to receive it.

(2) That she was not co-habiting.

As in the previous case the C.A.B. obtained medical evidence and statements from responsible visiting bodies giving opinions that in view of all tbe circumstances co-habitation did not exist.

In order that the client's difficulty should be fully understood we give below a summary of the points made by the P.M.L. in drafting the appeal and the points upon which the client had to argue before the Tribunal.

(1) The appellant herself gave the information which led to the withholding of ber pension. Clearly, if she had had a guilty mind it is inconceivable tbat she would have volunteered tbe information—she was not pressed to do so.

(2) Medical evidence points to the fact tbat Mr. ..... was not in a fit state to co-habit and was in serious need of someone to look after bim.

(3) It would be a sad thing if there were to be a presumption that because a widow acts as a housekeeper for a sick man that she must necessarily be co-habiting.

Whilst there might on a superficial view, be a suspicion of this state of affairs, on investigation it is, we submit, clear that this was not tbe case with the appellant. We would submit that the supporting letter dated ..... from ..... is of a most persuasive character.

(4) Allegations of bad faith, both in civil and criminal law, are allegations which must be proved strictly. It is not a question of a person accused having first to establish good faith. It is for the accuser to establish bad faith and establish it conclusively.

On the appeal our client succeeded in establishing her good faith but did not succeed in satisfying the Tribunal that she was not co-habiting.

On return to tbe C.A.B. tbe client expressed her feeling that sbe had felt it to be a great ordeal, she said she wished the Lawyer could have been tbere as she felt tbat there had been a degree of uncertainty in the Tribunal view on the second point and that if only she had been better able to express herself on the point upon which she had been "briefed" hy our Lawyer the result might have been different.

The client refused to proceed with an application for leave to appeal to the Commissioner saying tbat the appeal to the Local Appeals Tribunal had been so worrying to her tbat she preferred to accept the decision without further question.

Dr. R. M. Jackson

CLEARANCE SCHEMES

(*Note:* Following his oral evidence on 25th May, 1956, Dr. Jackson wrote to the Committee modifying his views on Questions 2762–3 of the *Minutes of Evidence,* Days 11–12. An extract from his letter, dated 28th June, 1956, is printed below.)

There is a point about Questions 2762 and 2763. Last week I was a guest at the Conference of Town Clerks and I heard some views about the problems of determining the classification of property for a clearance scheme. I suggested in my evidence that as a single house case goes to a County Court, there ought not to be any difficulty in the question of a number of houses also going to the County Court. The point I gathered from the Town Clerks is, however, that it would not be reasonable to decide about houses without actually visiting them, and that means going into every room and really making a good inspection of everything. A Town Clerk who had thought about this a good deal said that he did not think for one moment that one would get a County Court Judge to make a prolonged inspection of that kind. After the discussion I had with them I think I was wrong in suggesting the County Court.

The principle of an independent assessment for classifying these houses seems to me to be right, but I now think it would have to be some independent person or persons with the requisite professional qualifications who would do an adequate inspection and, to a considerable extent, use their own expert knowledge on what they saw.

Sir Reginald Sharpe, Q.C.

(*Note:* Sir Reginald Sharpe is Chairman of the National Health Service Tribunal (England and Wales). His first memorandum and oral evidence was published in the *Minutes of Evidence,* Day 20, pages 943–950.)

SUPPLEMENTARY MEMORANDUM ON THE NATIONAL HEALTH SERVICE TRIBUNAL

1. Since I have had the advantage of appearing before the Committee I naturally now appreciate the points with which they are especially concerned better than when I wrote my original Memorandum. I would therefore like this brief Supplementary Memorandum to be considered by the members of the Committee. The two main points about which I was specially questioned by the Committee relate to (*a*) the question whether the proceedings before the Tribunal should be *in camera* or in public and (*b*) the question of appeals from the decisions of the Tribunal.

2. Before dealing with these two main points there are, in view of other questions put to me by the Committee, two preliminary (but very important) matters to be stressed. The first is that the National Health Service Tribunal is not the last link in a chain; it in no wise revises, or considers by way of appeal, decisions of Service Committees. Just as Magistrates' Courts finally dispose of certain criminal cases summarily, while the more important ones go, after a preliminary inquiry, to Quarter Sessions or Assizes, so, in the National Health Service, the less serious cases are disposed of by the Service Committees, the more serious ones coming to the Tribunal, after, no doubt, a preliminary inquiry before a Service Committee, although that is not obligatory. But, as regards the more serious cases, the Service Committee does not dispose of the case; all it does is to recommend the Executive Council to institute proceedings before the Tribunal.

3. The second preliminary matter is this: Lord Balfour of Burleigh asked me whether there was any likelihood of a relevant fact or circumstance being overlooked by the Tribunal and, at his request, I detailed the procedure before

the Tribunal. I hope that I made it quite clear that, as stated in my origioal Memorandum, the Tribunal's procedure is "as near as may he in conformity with thc course which the proceedings would take in a court of law"; aod I referred to the proposal put before the Committee by the Geoeral Couocil of the Bar some two or three weeks before I myself gave evidence, namely, that "procedure at an inquiry should approximate as closely as possible to the normal procedure of the ordinary courts of law". Thus their proposed procedure is identical with the procedure which the Tribuoal has been followiog since it was established in 1948. The answer, therefore, to tbe question put to me by Lord Balfour of Burleigh is that there is no more and no less likelibood of any rclevant fact or circumstancc being overlooked by the Tribunal thao there is of any relevant fact or circumstance being overlooked in by a court of law: both the Tribunal and a court of law receive the evideoce of the parties in tbe case at hearing, and, if both or all parties neglect or otherwise omit to place before the Tribunal or a court of law evidence relating to a rclevant fact or circumstance, the Tribunal will naturally be unaware of sucb fact or circumstance just as will a court of law.

4. Turning now to the first of the two main points meotioned above: ooly the more serious cases come before the Tribunal and presumably they are not brought by an Executive Council without preliminary inquiry and much careful consideration. (If an iudividual patient launches a case before it, the Tribunal has the power to refuse an inquiry if it appears to it that no good cause has been shown why an inquiry should be held.) If the professions concerned have confidence in the Tribunal, they ought not to be afraid of tbe coosequeot publicity, whichever way the Tribunal's decision goes; if they have no confidence in the Tribunal, the Tribunal is useless. The view cxpressed before the Committec by the representatives of the British Medical Association cannot possibly be sustained if the Tribunal operates, as indeed it must (or thc Queen's Bench Division will intervene), according to the general principles of Eoglish justice. Their suggestion that justice will be better achieved "io the ioformal atmosphere of service committees" (which have no power to administer an oath) is destructive of the doctors' own case: do they wish to have complaints against themselves investigated on the basis of tittle-tattle and gossip, of unsworn testimony and no testing of its accuracy by proper cross-examination? I would particularly refer the Committee again to the print of my Address at Brighton: to the last nine lines on page 7 and the first four lines on page 8.

5. On the question of appeals from decisions of the Tribunal, I should be perfectly prepared to agree (as was put to me by the Committee) that, possibly, there need be no appeal at all, especially as there is now no appeal available to tbe Executive Council (or other Complainant) if the practitioner is successful. But, if there is to be an appeal, whether one-way or two-ways, it should be to a body at least of the general calibre (a word used by Sir Oliver Franks when addressing me) of the Tribunal itself. And all that I have said above relating to public hearings should, in my view, apply equally to the appeals.

7th August, 1956.

FURTHER NOTE BY THE CHAIRMAN OF THE NATIONAL HEALTH SERVICE TRIBUNAL

In the two Memoranda which I submitted to the Committee oo Administrative Tribunals and Inquiries I sought to stress the desirability of the proceediogs before the National Health Service Tribunal being conducted in public. I also did so in my oral evidence before that Committee, when I referred to doctors being, apparently, "terrified" of the publication of names involved in disciplinary proceedings.

During the course of a hearing before the Tribunal this last week, in wbich a registered medical practitioner was coocerned, the practitioner produced to the Tribunal a copy of the issue of the *British Medical Journal* for Saturday tbe 14th January, 1956. I append an extract from the supplement to that issue,

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which, although called a "Supplement", is in fact bound up with, and forms an integral part of, the *British Medical Journal* itself. The extract contains a fairly full report of the findings of the Medical Service Committee concerned. The large-type heading, "FALSE PROMISES OF PARTNERSHIP"—that phrase also appears in the table of Contents of the Supplement, which I also append—is followed, in the body of the report, by a statement that the Medical Service Committee had found to be established by the evidence the facts which appear in the report, which includes a series of findings most harmful to the doctor and, at the very end, an expression of the opinion of the Medical Service Committee that the doctor concerned had persistently engaged assistants by dishonest means.

A similar account of the Medical Service Committee's findings had already appeared on page 4 of the issue for the 23rd December, 1955—pleasant reading for Christmas—of the *North Wales Chronicle*, a newspaper which itself states that it is published at Bangor, Portmadoc and Llangefni.

Both reports referred to the alleged miscreant as Dr. "Y", a general medical practitioner under the National Health Service in Caernarvonshire. The true identity of the practitioner was scarcely concealed, and I for one have no doubt that it very soon became known in the Caernarvonshire countryside who Dr. "Y" really was, although very likely sometimes the name of another, and, of course, perfectly innocent, general medical practitioner may have been incorrectly spoken of in the county as being the alleged wrong-doer. The attempt to disguise the identity of the individual concerned may not only be quite unsuccessful, so far as a number of the readers of the report are concerned, but may also lead other readers to believe that the doctor in question is some other doctor than the one he really is.

On top of all this there is this final objection to this "thin veiling" attempt at identity-concealment: Apart from the fact that the evidence before the Medical Service Committee was not on oath, there was always the prospect that the Tribunal, on hearing the representation—and hearing it on sworn testimony—might come to a very different conclusion about the alleged miscreant's conduct. In fact, when this particular case did come before the Tribunal in April last, the Tribunal did not find as facts any of the matters which the Medical Service Committee had found as facts; actually, during the course of the hearing, the Complainant Executive Council, which had made the representation and whose Medical Service Committee had arrived at the serious findings of fact mentioned, withdrew the representation, on certain terms, with the approval of the Tribunal. The hearing before the Tribunal having necessarily been *in camera*, neither the local Press nor the *British Medical Journal* were able to attempt to repair any harm done to the doctor in question by their respective reports published three months earlier.

Surely what must "terrify" innocent doctors is a system under which publicity cannot be given immediately to proceedings before the Tribunal, seeing that the Tribunal can only function when someone has thought that there was a *prima facie* case against the practitioner.

In conclusion I would just like to add a rather interesting fact: the practitioner member of the Tribunal, which, in April, allowed this particular representation to be withdrawn, was none other than Dr. Guy Dain, who (according to the report in *The Times* of the 19th July last) told the Committee, or, rather,

> "submitted that the entire doctor-patient relationship was based on confidence in the doctor and that it would be harmful to that confidence among patients if a case were 'written up in headlines', and in the long run the complaint was not substantiated."

In the case which I have mentioned above the complaint was "written up in headlines" but the complaint was withdrawn.

9th October, 1956

Extract from the Supplement to the British Medical Journal of 14th January, 1956

FALSE PROMISES OF PARTNERSHIP

MEDICAL SERVICE COMMITTEE FINDINGS

At a meeting last month the Caernarvonshire Executive Council adopted the report and recommendation of its Medical Service Committee and resolved that representation be made to the Tribunal that the continued inclusion of the name of Dr. "Y" in any medical list would be prejudicial to the efficiency of the general medical services.

The Medical Service Committee had found the following facts established by the evidence. During the period from March, 1950, to August, 1955, Dr. "Y" had engaged at least nine doctors as assistants with a view to partnership, but had failed to come to an agreement with one. In July, 1953, the executive council gave notice to Dr. "Y" that permission to employ an assistant medical practitioner was withdrawn with effect from 31st December, 1953. On 14th March, 1954, Dr. "Y" made a fresh application. On 16th March, 1954, the council resolved that the application be not granted. Dr. "Y" appealed, but the council's decision was upheld. Dr. "Y" was interviewed by the council at his request in February, 1955, when it was resolved that the previous decision of the council be upheld. Nevertheless, Dr. "Y" had persisted in his practice of advertising for and engaging assistants. In August, 1955, Dr. "Y" signed a stamped agreement with a Dr. "X", but refused to implement it when Dr. "X" was admitted to the medical list as his partner, with effect from 1st September, 1955.

In the Committee's opinion, on the evidence before it, Dr. "Y" had been using the offer of a partnership as a means of inducing doctors to be his assistants, but the offers were not seriously meant. On his own admission, his practice did not justify the introduction of a partner. Dr. "Y", by his conduct, had caused considerable hardship to young married doctors, who suffered financially and in other ways because of it, and in persistently engaging these assistants in his practice by dishonest means was bringing discredit upon the service.

(32941) Wt. 4634—7 K4 5/57 D.L.